THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2014-002587
Common Pleas Case No. 2012-CP-40-6974

S. Coley Brown,.....Appellant,

v.

Spring Valley Homeowners Association, Inc.....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v.	)	Civil Action No.: 2012-CP-40-6974
Spring Valley Homeowners Association, Inc., Defendant.	)	**ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT**

2014 APR -3 AM 11:

This matter came before me on November 13, 2013, for a hearing on the cross motions for summary judgment filed by Plaintiff and Defendant. After hearing oral argument, reviewing the memoranda and related documentation submitted by both parties, and after fully considering the facts and circumstances I grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment, as set forth more fully below.

BACKGROUND

The properties in the Spring Valley subdivision in Columbia, South Carolina are subject to deed restrictions that run with the land and this action arises out of the enforcement of those deed restrictions. More specifically, this action arises out of the enforcement of the restriction concerning the placement of "for sale" signs on property located within the subdivision.

On August 31, 2007, the plaintiff purchased the property located at 118 Spring Valley Road in the Spring Valley subdivision and the deed was recorded on November 4, 2007. Pursuant to the deed, the conveyance of the property was "subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises." Thus, Plaintiff took the property subject to any covenants and deed restrictions of record in the chain of title. The covenants and restrictions contained in the chain of title for plaintiff's property are contained in the 1979 deed from Pine Springs, Inc. to Goodwin

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Construction, Inc. The covenants and restrictions provide that the grantee of the property "covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association and will abide by its duly enacted rules, regulations and bylaws..." Among other things, the covenants and restrictions also provide for a restriction on placing "for sale" or "for rent" signs on the property. More specifically, the deed restriction provides as follows:

> (11) Except as specifically provided for in this paragraph, no "SALE" or "RENT" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:
>
> > (a) Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon no more than (2) "For Sale" signs only (the size and content, of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.
> >
> > (b) After the first sale of a lot with a dwelling thereon no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by Spring Valley Homeowners Association, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.
> >
> > (c) No sign shall ever be nailed or fastened to any tree at any time.

Further, the deed provides that: "AND IT IS UNDERSTOOD AND AGREED that the said conditions, covenants and restrictions shall be appurtenant to and run with the same premises; and that in the event of the violation of any of the said conditions, covenants and restrictions, the said GRANTOR, its successors or assigns, shall have the right, jointly or severally of abatement and to enforce compliance by injunction of [sic] any other appropriate legal action."

Pursuant to the deed covenants and restrictions, the Spring Valley HOA has duly enacted rules, regulations and bylaws, which are applicable to Plaintiff. Article III of by Bylaws provides that some of the purposes of the Spring Valley HOA are to "enforce any and all

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covenants, restrictions and agreements applicable to the property within Spring Valley..." and "to do any and all other things that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents and owners within Spring Valley."

Article X, Section 1 of the Bylaws provides the following powers to the Spring Valley HOA Board of Directors, among other things:

1. The power to "adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the Members and their guests thereon and to establish penalties for the infractions thereof"
2. The power to "exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the By-Laws or the Articles of Incorporation, including the enforcement and exercise of all conditions, covenants, restrictions and limitations contained in deeds given by Pine Springs, Inc. or Spring Valley Associates, Inc. to lots or residence in Spring Valley"
3. The power to "adopt and publish rules and regulations governing the use and alteration of property located in Spring Valley that does not restrict deed restrictions, covenants, nor Richland County Ordinances"
4. The power to "adopt and publish a schedule of fines as appropriate, for violations of covenants, deed restrictions, rules and regulations and/or By-Laws of the Spring Valley Homeowners Association (SVHA) by 'owner(s)'".

Further, Article X, Section 2 of the Bylaws provides that it is the duty of the Board of Directors to "assess and collect fines for the continuous and repeated violation(s) of covenants, deed restrictions, rules and regulations, and/or By-Laws by owner(s) until the violation(s) is/are

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abated." Additionally, the duly adopted rules and regulations contain a fine structure for abatement of violations of the deed restrictions, rules and regulations. The initial amendment to the bylaws granting the Spring Valley HOA the authority to fine members for a violation of the bylaws, rules and regulations, and covenants and restrictions was duly adopted in 2004, thus, the Spring Valley HOA had the authority to issue fines for several years prior to Plaintiff purchasing the subject property in Spring Valley.

Despite Plaintiff's actual or constructive knowledge of the restriction on the placement of "for sale" signs and the Spring Valley HOA's ability to levy fines for violations of the restriction, Plaintiff placed a "for sale" sign on his property without seeking prior approval from the Spring Valley HOA, in violation of the covenants and restrictions. On October 4, 2011, Carl Voges, the General Manager of the HOA, advised Plaintiff in writing of his violation and advised that he had 15 days to remove the sign and that the fine schedule for the violation would begin to run if the sign was not removed by October 19, 2011. Despite receiving the letter, Plaintiff did not remove the "for sale" sign from his property. On October, 20, 2011, Carl Voges notified Plaintiff in writing that the fine schedule had begun concerning his violation of the deed covenants and restrictions, as the sign had not been removed as previously directed. Consequently, I find that the HOA complied with the notice requirements contained in the fine structure prior beginning to levy any fine against Plaintiff.

On October 23, 2011, Plaintiff's counsel wrote Carl Voges contesting the fine schedule and requesting that had hardship determination be made. On November 7, 2013, counsel for the Spring Valley HOA advised Plaintiff's counsel that the HOA Board would hear him concerning his hardship request on December 8, 2011. The "for sale" sign was not removed by Plaintiff

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until late November 2011 or Early December 2011 after Plaintiff had already secured a renter for his property.

On December 8, 2011, Plaintiff's hardship request concerning the placement of a "for sale" sign was considered by the HOA Board. At the meeting, Plaintiff admitted that he understood that no "for sale" signs are permitted without prior approval of the Board and that he never obtained prior approval. The HOA board sought legal advice from its counsel, Harry Goldberg of the Finkel Law Firm, concerning the authority of the HOA to levy fines. Upon advice of counsel concerning the authority of the HOA to levy fines, the Board voted at the December 8, 2011 meeting to impose/uphold a $500 fine against plaintiff for his violation deed covenants and restrictions. Plaintiff failed to pay the fine, therefore, the HOA Board voted at its February 23, 2012 meeting to hire the Finkel Law Firm to pursue legal action against Plaintiff. The Finkel Law Firm filed a lien against Plaintiff's property. The lien was signed by the HOA President, Rodney Spivey, upon the request, direction and advice of legal counsel. The lien on Plaintiff's property was filed by Defendant's legal counsel on September 13, 2012. The lien was subsequently removed from Plaintiff's property by counsel for the HOA and there no longer exists any lien against Plaintiff's property by the HOA.

Plaintiff brought the current suit against the Spring Valley HOA, alleging that the fine is improper and unenforceable for several reasons and seeking monetary damages against the HOA. The Spring Valley HOA has counterclaimed, seeking enforcement and collection of the fine that was levied. Both parties now seek summary judgment as to the issues presented in this suit.

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LAW/ANALYSIS

1. Summary Judgment Standard

Summary judgment is proper when there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRCP; See also *Bayle v. S.C. Dept. of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); *Bruce v. Durney*, 341 S.C. 563, 534 S.E.2d 720 (Ct.App.2000). "In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in the light most favorable to the non-moving party." Wade v. Berkeley County, 330 S.C. 311, 317-17, 498 S.E.2d 684, 687 (S.C. Ct. App. 1998) (citations omitted). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 240, 355, 559 S.E.2d 327, 336 (Ct. App. 2001) (citation omitted).

2. Authority to Fine, Fine as Violation of Public Policy and Fine as an Unenforceable Contractual Penalty

The Plaintiff asserts that a Homeowners Association lacks the power and authority to fine its members. Specifically, Plaintiff contends that only governmental entities have the authority to levy fines, unless such authority is delegated to others by statute. The South Carolina Courts have not yet directly addressed a homeowners' association's authority and ability to fine its members in this respect, thus a novel issue has been presented.

As a starting point, it should be noted that although restrictive covenants are strictly construed, the rule of strict construction does not preclude their enforcement. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). "A restrictive covenant

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will be enforced if the covenant expresses the party's intent or purpose" and the rule of strict construction "will not be used to defeat the clear express language of the covenant." Id. Furthermore, "[c]ourts shall enforce such covenants unless they are indefinite or contravene public policy. Id. Here, the relevant restrictions, bylaws, rules and regulations, and fine structure are clear and unambiguous, duly adopted, do not violate public policy and are applicable to Plaintiff. Further, the fine was properly levied under the restrictions, bylaws, rules, regulations and fine structure for the violation of the "for sale" sign restriction. Consequently, the fine must be enforced, unless a homeowners association lacks the inherent authority to fine its members, as Plaintiff suggests.

Plaintiff has cited to several authorities from other jurisdictions in support of his proposition that only a governmental entity can fine and that a homeowners association lacks the authority to fine without specific statutory authorization to do so; however, none of the cited authorities are binding on this Court. Plaintiff has not cited to any binding South Carolina authority suggesting that a homeowners association in South Carolina lacks the inherent authority to issue a fine, even though such fine is authorized by its governing documents. Further, the vast majority of authorities cited by Plaintiff deal with condominium associations or other statutorily created/governed homeowners associations and are inapposite to the case at hand, which involves a homeowners association for a planned community whose authority derives from the deed covenants and restrictions, the bylaws, and common law rather than a statutory scheme specifically applicable to homeowners associations. Consequently, homeowners associations for planned communities in South Carolina do not require specific statutory authority to act and they are not constrained to act in the absence of statutory authority like a condominium association or other statutorily created/governed homeowners associations.

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3. **Waiver**

Plaintiff next contends that Defendant has waived its right to enforce the restriction on "for sale" signs. "'Waiver is a voluntary and intentional abandonment or relinquishment of a known right.'" Laidlaw Envtl. Servs., Inc. v. AETNA Cas. & Sur. Co., 338 S.C. 43, 52, 524 S.E.2d 847, 852 (Ct. App. 1999) (quoting Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992)). I find that Defendant has not voluntarily and intentionally abandoned its right to enforce the restriction on "for sale" signs and has not waived it right to enforce such restriction. Consequently, summary judgment is granted to Defendant and denied as to Plaintiff on that issue.

4. **Enforceability of the "For Sale" Sign Restriction**

Plaintiff contends that the restriction on the placement of "for sale" signs in the Spring Valley Subdivision violates public policy by constituting an unreasonable restraint on the alienation of property. I find that the "for sale" sign restriction is not an unreasonable restraint on the alienation of property and does not violate public policy. Such ruling is consistent with other jurisdictions that have addressed the same issue. See e.g., Godley Park Homeowners Ass'n, Inc. v. Bowen, 649 S.E.2d 308, 310-11 (Ga. Ct. App. 2007) (holding that restrictive covenants prohibiting the placement of "for sale" signs do not constitute unenforceable restraints on the alienation of property). Consequently, summary judgment is granted to Defendant and denied to Plaintiff on this issue.

5. **Plaintiff's Unfair Trade Practices Claim**

Plaintiff next asserts that Defendant's conduct in levying and pursuing collection of the fine constitutes a violation of the South Carolina Unfair Trade Practices Act.

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In order for the Unfair Trade Practices Act to apply and to prove a violation of the Unfair Trade Practices Act, the allegedly unfair or deceptive acts or practices must occur "in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20; Moore v. Williamsburg Regional Hosp., 560 F.3d 166, 178 (4th Cir. 2009). Trade or Commerce is defined by the Act as "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10. The acts of homeowners association in enforcing the covenants and restrictions were not in the conduct of any trade or commerce because the HOA was not selling or distributing any services or property to Plaintiff. See Moore, 560 F.3d at 199 (hospital's peer review of a doctor is not action taken in the conduct of trade or commerce); Foggie v. CSX Transportation, Inc., 313 S.C. 98, 104, 431 S.E.2d 587, 591 (1993) (railroad company's refusal to reinstall railroad crossing was not the conduct of trade or commerce.) Because the Defendant's actions were not in the conduct of Trade or Commerce, the Unfair Trade Practices Act is inapplicable and Defendant is entitled to summary judgment as to Plaintiff's unfair fair trade practices claim.

Further, assuming arguendo that the Unfair Trade Practices Act does apply to Defendant in this case, it should be noted that in order to prove a cause of action for unfair trade practices, Plaintiff must prove that Defendant engaged in "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce". S.C. Code Ann. § 39-5-20. Plaintiff has not come forward with any evidence of any unfair methods of competition. Further, as set forth above, the Defendat had legal authority for its actions and followed the procedures set forth in the applicable bylaws, rules and regulations, restrictive covenants and the

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fine structure. Therefore, I find that Plaintiff has not come forward with any evidence that Defendant engaged in any unfair or deceptive acts or practices in the conduct of any trade or commerce. Consequently, there is no genuine issue as to any material fact as to Plaintiff's Unfair Trade Practices Act claim and Defendant is entitled to Summary Judgment on as that claim on this additional ground as well.

Finally, in order to have a valid claim under the Unfair Trade Practices Act, Plaintiff must show that the Defendant's conduct has an impact upon the public interest, as the "act is not available to redress a private wrong where the public interest is unaffected." Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 457, 478, 351 S.E.2d 347, 350 (Ct. App. 1986). I further find that Plaintiff has not shown any impact on the public interest. Rather, Plaintiff knowingly violated the rules and is seeking redress for a fine issued to him, which is simply an attempt to redress an alleged private wrong and has no impact on the public interest. Consequently, I find that the Unfair Trade Practices Act is inapplicable to Defendant for this reason as well, and Defendant is further entitled to Summary Judgment as to Plaintiff's Unfair Trade Practices claim on this ground as well.

For the above-stated reasons, summary judgment is granted to Defendant as to Plaintiff's Unfair Trade Practices claim and summary judgment is denied to Plaintiff.

6. Plaintiff's Slander of Title Claim

Plaintiff asserts that Defendant has slandered his title by filing a notice of lien in connection with the fine. In order for Plaintiff to maintain a cause of action for Slander of Title, he "must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value

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of the property in the eyes of third parties." Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012).

As set forth above, I find that Defendant had the authority to issue the fine and, therefore, lack of authority to issue the fine cannot be a basis for Plaintiff's slander of title claim. However, Plaintiff also asserts that even if the Defendant had the authority to issue the fine, it lacked authority to file the lien to enforce/collect the fine. I disagree. As set forth above, the covenants and restrictions, bylaws, fine structure, and rules and regulations give Defendant broad authority, including, but not limited to:

- The right to *enforce* compliance by injunction or *any other appropriate legal action.*
- The power to *enforce* and exercise of all conditions, covenants, restrictions and limitations contained in the deeds.
- The power to adopt and publish a schedule of fines for violations of covenants, deed restrictions, rules and regulations and/or By-Laws of the Spring Valley Homeowners Association.
- The power and duty to *assess and collect* fines for the continuous and repeated violation(s) of covenants, deed restrictions, rules and regulations, and/or By-Laws by owner(s) until the violation(s) is/are abated.

Further, some of the stated purposes of the Spring Valley HOA are to "enforce any and all covenants, restrictions and agreements applicable to the property within Spring Valley..." and "to do any and all other things that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents and owners within Spring Valley."

I find that the filing of the lien was within the broad enforcement authority granted to the Spring Valley HOA, including the broad authority to assess and *collect* fines. I further find that the filing of the lien is in accord with the stated purposes of the Spring Valley HOA.

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Consequently, I grant summary judgment to Defendant on the slander of title claim and deny summary judgment to Plaintiff.

7. **Business Judgment Rule**

Defendant asserts that it is further entitled to summary judgment as to Plaintiff's claims for Unfair Trade Practices and Slander of Title on the basis of the Business Judgment Rule. I agree.

It is axiomatic that a corporation acts through its board of directors. Plaintiff's Unfair Trade Practices and Slander of Title claims are premised on the board of directors' decision to issue/affirm the fine and to file the lien. Consequently, both causes of action are a direct challenge to the actions, decisions and conduct of the Board of Directors. "In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." Baumann v. Long Cove Club Owners Assn'n, 380 S.C. 131, 138, 668 S.E.2d 420 (Ct. App. 2008) (quoting Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993)). Further, the standard of conduct for directors of nonprofit corporations is statutorily codified. S.C. Code Ann. § 33-31-830. More specifically, S.C. Code Ann. § 33-31-830 provided in relevant part:

> SECTION 33-31-830. General standards for directors.
>
> (a) A director shall discharge his duties as a director, including his duties as a member of a committee:
>
> (1) in good faith;
>
> (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

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Further, on at least one occasion, the South Carolina Court of appeals has acquiesced to a homeowners association's ability to sanction its member for rules violations. See Seabrook Island Property Owners' Ass'n v. Berger, 365 S.C. 234, 239, 616 S.E.2d 431, 434 (Ct. App. 2005) (citing to trial court's order referencing provision in the covenants authorizing sanctions for violations when searching for basis for the recovery of attorney's fees). Further, in Rawlinson Road Homeowners Association v. Jackson, the Court of Appeals was aware that the homeowners association had issued a fine to a homeowner, but the court made no comment or indication that the ability to fine is solely a governmental power and homeowners associations lack the inherent authority or power to fine because they are not governmental entities. Rawlinson Road Homeowners Association v. Jackson, 395 S.C. 25, 716 S.E.2d 337 (Ct. App. 2011).

Ultimately, I find the arguments and authorities cited by Plaintiff unpersuasive and in derogation of longstanding custom and practice in South Carolina. Additionally, I find that it is not a violation of public policy for a homeowners association to fine its members for violations of the bylaws, rules and regulations, or restrictive covenants, nor does the issuance of such a fine constitute an unenforceable contractual penalty.

Further, while I find that specific statutory authority for a planned community homeowners association in South Carolina to levy a fine is not required, the South Carolina Nonprofit Act nonetheless provides statutory authority in any event. The Spring Valley Homeowners Association is a non-profit corporation and is governed by the South Carolina Nonprofit Corporation Act. S.C. Code Ann. § 33-31-101, et seq. Pursuant to the South Carolina Nonprofit Corporation Act, the corporation shall adopt bylaws and the "bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with

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law or the articles of incorporation." S.C. Code Ann. § 33-31-206. Further, the South Carolina Nonprofit Corporation Act grants the following powers to a nonprofit corporation, among other things:

> Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:
> ...
>
> (3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the corporation;
>
> ...
>
> (10) to conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this State;
>
> ...
>
> (15) to impose dues, assessments, and admission and transfer fees upon its members;
>
> ...
>
> (18) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

S.C. Code Ann. § 33-31-302. I find that the imposition of fines on the members of a nonprofit corporation falls within the broad statutory authority and power granted to nonprofit corporations and is not inconsistent with the law of this state or public policy.

Based on the foregoing, I grant defendant's motion for summary judgment and deny plaintiff's motion for summary judgment on the issues of the Spring Valley Homeowners Association's power and authority to fine, whether such fine violates public policy and whether such a fine constitutes an unenforceable contractual penalty.

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(3) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation who the director reasonably believes is reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and who the director believes is reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

...

Based on the Affidavit of Beth Swindler and the meeting minutes attached thereto, I find that the Board of Directors acted reasonably and competently by specifically relying upon the advice of legal counsel with regard to whether there was authority to issue the fine and also as the filing of the lien. Further, I find that the Board of Directors acted in accordance with covenants, bylaws, rules and regulations and restrictive covenants in issuing the fine and filing the lien. Further, the Board acted reasonably and in accordance with long-established practices and industry customs. I find no evidence of bad faith, dishonesty, or incompetence.

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Consequently, the Board met its standard of care under the Business Judgment Rule and S.C. Code Ann. § 33-31-830.

However, Plaintiff has contended that the business judgment rule only applies to individual directors. I disagree. The South Carolina Courts have applied the business judgment rule to the homeowners association entity in actions arising out of a decision made or action taken by the homeowners association by and through the board of directors. See Baumann v. Long Cove Club Owners Assn'n, 380 S.C. 131, 138, 668 S.E.2d 420 (Ct. App. 2008) (applying business judgment rule the Association, who was the named defendant); Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Ct. App. 1987), aff'd 294 S.C. 86, 362 S.E.2d 874 (1987) (applying the business judgment rule to the Association).

Based on the foregoing, I find that Defendant is entitled to summary judgment as to Plaintiff's claims for Slander of Title and Unfair Trade Practices on the basis of the business judgment rule as well. Consequently, summary judgment is denied to plaintiff as to those claims.

DEFENDANT'S COUNTERCLAIMS

This Court has determined that the Spring Valley Homeowners Association has the authority to issue and enforce fines against its members. It further finds that there is no question of fact in controversy as to whether it instituted the fine against Plaintiff in accordance with the rules and procedures provided for in the Bylaws. As such the Court grants the Defendant's Motion for Summary Judgment on its counterclaim for breach of contract/covenant enforcement.

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CONCLUSION

Having denied each of Plaintiff's motions for summary judgment and granted Defendant summary judgment as to all of Plaintiff's causes of action as well as its counterclaim against Plaintiff, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. All of Plaintiff's causes of action shall be dismissed with prejudice.
2. Judgment shall be entered against Plaintiff in favor of Defendant in the amount of $500.

IT IS SO ORDERED

Eugene C. Griffith Jr.

Richland County, South Carolina
March 28th, 2014

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C.A. No.: 2012-CP-40-06974
	)	
S. Corley Brown	)	
	)	
Plaintiff,	)	**ORDER**
	)	
vs.	)	
	)	
Spring Valley Homeowners Association	)	
	)	
Defendant.	)	

RICHLAND COUNTY FILED
2014 OCT -6 AM 10: 36
JEANNETTE W. McBRIDE C.C.P. & G.S.

Following the non-jury trial held on November 13, 2013 in the above-referenced matter, this Court found in favor of the Defendant. The Court has reviewed the Defendants' Motion, as well as all responses filed thereto, and Defendants' Motion is hereby **DENIED** and this Court's previous Order is confirmed. Pursuant to Rule 59(e), this matter was decided upon brief without oral arguments, as any additional hearing would be redundant and unnecessary.

IT IS SO ORERED.

Eugene C. Griffith, Jr.
8th Judicial Circuit Court Judge

Newberry, South Carolina
October 3, 2014

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v.	)	Civil Action No.: 2012-CP-40-6974
Spring Valley Homeowners Association, Inc., Defendant.	)	**CORRECTED ORDER DENYING MOTION TO RECONSIDER**

2014 OCT 23 AM 9:59
RICHLAND COUNTY
FILED
C.C.P. & G.S.

An Order denying the motion to reconsider this matter was signed October 3, 2014 and was filed with the Clerk of Court shortly thereafter. That order contained errors related to whom the moving party was in the motion to reconsider. Both this order and the former order deny the motion to reconsider, however, out of an abundance of caution, the order signed on October 3, 2014 is vacated and this Order is substituted for it.

Thus this Court finds that: This matter came before me on November 13, 2013, for a hearing on the cross motions for summary judgment filed by Plaintiff and Defendant. By Order filed April 3, 2014, Defendant's Motion for Summary Judgment was granted and Plaintiff's Motion for Summary Judgment was denied. Thereafter, Plaintiff filed a Motion to Reconsider pursuant to Rules 52(b) and 59(e), SCRCP. After reviewing and considering the Plaintiff's Motion, I hereby **DENY** the Plaintiff's Motion to Reconsider and confirm the previous Order of this Court. Pursuant to Rule 59(e), this matter was decided upon brief without oral arguments as any additional hearing would be redundant and unnecessary.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
8th Judicial Circuit Court Judge

October 9, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

S. Coley Brown)
Plaintiff(s))

CIVIL ACTION COVERSHEET

2012-CP - 40- 6974

vs.

Spring Valley Homeowners Association, Inc.,)
Defendant(s))

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-___-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: October 15, 2012

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Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO. 2012-CP-40-_____
S. Coley Brown, **Plaintiff,** **vs.** **Spring Valley Homeowners Association, Inc.,** **Defendant.**	**SUMMONS**

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

October 15, 2012

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO. 2012-CP-40-_____
S. Coley Brown, **Plaintiff,** **vs.** **Spring Valley Homeowners Association, Inc.,** **Defendant.**	COMPLAINT

The Plaintiff, complaining of the Defendant herein, brings this complaint and alleges as follows:

1. The Plaintiff is a citizen and resident of the State of South Carolina.

2. The Defendant is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business being in Richland County, South Carolina.

3. The Defendant is not a sovereign, is not a federal, state, county, or municipal government, and is not an agency or other part, arm, or branch of any federal, state, county, or municipal government.

4. The property subject of this action is located in Richland County, South Carolina.

5. The Plaintiff and Annette Carlson are the owners in fee simple of the property subject of this action.

6. The property subject of this action is a lot (with a house built on it) located in the Spring Valley subdivision.

7. The Plaintiff's property subject of this action has the street address of 118 Spring Valley Road, Columbia, South Carolina 29223.

8. The Defendant is organized as nonprofit corporation to function as a homeowners' association for the benefit of all the owners of property in the Spring Valley subdivision.

9. Owners of property in Spring Valley automatically become members of the Defendant by virtue of their property ownership when they become owners.

10. The Plaintiff is a member of the Defendant corporation.

11. Upon information and belief, the deeds to all lots in the Spring Valley subdivision contain covenants restricting use of the property and making owners of the lots members of the Defendant corporation.

12. The covenants in the deeds to all lots in Spring Valley are essentially identical for all purposes material to this case.

13. These covenants provide that property owners in Spring Valley are obligated to pay to the Defendant periodic assessments for the purpose of maintenance of Spring Valley's streets, roads, storm drains, common areas, and security services.

14. These covenants provide that those periodic assessments shall constitute a lien on the subject property, as well as a personal obligation of the property owner and every succeeding owner.

15. These covenants do not state that the Defendant has any power or authority to fine owners of property in Spring Valley.

16. The only liens in favor of the Defendant that are provided for in the covenants are liens for periodic assessments for maintenance.

17. Fines are not assessments.

18. No federal, state, county, or municipal government has delegated to the Defendant any power to levy fines.

19. The Defendant purported to amend its by-laws on or about November 8, 2004, to provide that the Defendant's board of directors has the power to "adopt and publish a schedule of fines as appropriate, for violations of covenants, deed restrictions, rules and regulations and/or By-Laws of the Spring Valley Homeowners Association[.]"

20. The Defendant purported to amend its by-laws on or about November 8, 2004, to provide that the Defendant's board of directors has the duty to "assess and collect fines for the continuous and repeated violation(s) of covenants, deed restrictions, rules and regulations, and/or By-Laws" by owners of property in Spring Valley "until the violation(s) is/are abated."

21. The Defendant purported to issue "Rules and Regulations" that state that the Defendant's board of directors "has the right to fine" owners of property in Spring Valley "$50.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year" for "any violations of the Deed Restrictions, [the Defendant's] Rules and Regulations, and Richland County Ordinances."

22. The Spring Valley covenants provide that no "'Sale' or 'Rent' signs or other types of advertising or billboards shall be permitted" on property subject to the covenants, except for a for sale sign for a newly constructed dwelling and "except that in cases of hardship, subject to prior approval by SVHA, one 'For Sale' sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale."

23. The Defendant has for years taken the position in an "Information Guide" provided to new owners of property in Spring Valley (and available on the Defendant's website) that the Spring Valley covenants absolutely "prohibit all forms of signs within the subdivision[,]" including "all types of 'For Sale' signs as well as lost pet signs, garage sale signs, remodeling signs, security service, and political signs[,]" as well as "[b]alloons on mailboxes[,]" which the Defendant considers signs.

24. Despite taking this position, for several years the Defendant's usual reaction to an owner placing a for sale sign in the yard of a previously occupied dwelling, where the owner had not obtained any permission from the Defendant, was to take no action about it.

25. Over several years, a number of previously occupied houses in Spring Valley had for sale signs openly displayed in their yards.

26. The Defendant took no action to attempt to enforce the covenants' provisions about signs against the owners of those houses.

27. In 2011, the Plaintiff contacted the Defendant about getting approval from the Defendant for the Plaintiff to place one for sale sign, smaller in size than two feet by three feet, on his property in Spring Valley.

28. The Defendant's representative responded to this request by telling the Plaintiff that the Defendant would not approve the requested installation of a sign under any circumstances.

29. The Plaintiff was undergoing a "case of hardship" as that term should be understood to mean in interpreting the Spring Valley covenants.

30. The Plaintiff placed the sign in the yard of his Spring Valley property.

31. On or about October 4, 2011, the Defendant sent the Plaintiff a letter stating that "[y]our decision to install the sign is a violation of our community's deed restrictions and creates an 'unsightly condition.' This means that you have fifteen (15) days to remove the sign. If it is still in place on 19 October 2011, then the fine schedule of one hundred (100) dollars per week will get underway. The schedule will run for fifteen (15) weeks. If the sign is removed before the fifteen (15) weeks are concluded, the fine will apply to the weeks it was displayed."

32. On October 23, 2011, counsel for the Plaintiff wrote a letter to the Defendant noting that the Spring Valley covenants do not absolutely prohibit for sale signs and pointing out that

the Defendant categorically refused to undertake any assessment of whether the Plaintiff was in a case of hardship.

33. This letter also questioned why the Defendant, which is not a governmental entity, believed it could levy fines.

34. The Defendant received this letter.

35. The Plaintiff kept the sign up until he no longer had a reason to advertise the property for sale.

36. The Plaintiff provided the Defendant with still another letter from Plaintiff's counsel that set out in some detail an explanation of why the Defendant, which is not a governmental entity, lacks the power and authority to fine Spring Valley property owners and cannot lawfully do so.

37. The Defendant decided to fine the Plaintiff $500.00 for placing the sign on his property.

38. On or about April 9, 2012, an attorney for the Defendant sent the Plaintiff a letter that purported to be a "notice of right to cure" stating that the Plaintiff has the obligation to pay fines levied by the Defendant and that the Plaintiff had until May 9, 2012, to pay the Defendant the $500.00 fine amount or the Defendant would have "the right to foreclose on the subject property" and the right to bring legal proceedings, in which "the [Defendant] shall be entitled to collect all expenses incurred thereby, including, but not limited to, reasonable attorney's fees of the unpaid debt and costs, all of which shall be additional sums secured by the loan instruments [sic] in accordance with applicable law."

39. A document entitled "NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. SECTION 1601, AS AMENDED" was attached to the April 9th letter. The notice provided that "[t]he debt described in the letter attached hereto will be

assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days, dispute the validity of the debt or some portion thereon [sic]" and that "[i]f you, the Debtor, notify the Creditor's law firm thirty (30) days that the debt of any portion thereof is disputed [sic], the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm."

40. On May 3, 2012, Plaintiff's counsel provided the Defendant's attorney who wrote the letter with a letter giving notice that the Plaintiff disputes the validity of the debt the Defendant claims it is owed and that the Plaintiff requests that verification of the claimed debt be mailed to Plaintiff's counsel.

41. The law firm of the Defendant's attorney received the May 3rd letter from Plaintiff's counsel.

42. On September 13, 2012, the Defendant recorded a "NOTICE AND CERTIFICATE OF LIEN FOR HOMEOWNERS'S FEES" against the Plaintiff and his co-owner of the subject property in the public land records of office of the Richland County Register of Deeds in Book 1796 at page 73.

43. This recorded "notice" states that the Defendant "is due the principal sum of Five Hundred dollars ($500.00), as of December 8, 2011, plus interest, costs and attorneys' fees and such other and further assessments, and late fees accruing after said date from the property owner and co-owners" and "[t]hat by virtue thereof, by the service and filing of the Notice and Certificate of Lien, Spring Valley Homeowners Association, Inc. has and claims a lien to secure the payment of the obligations due and owing, plus costs, interest, late fees, and other expenses accruing after December 8, 2011, on the property" subject of this case.

44. As of the date of the filing of this case, neither the Defendant nor its counsel has provided the Plaintiff or his counsel with verification of the claimed debt.

FOR A FIRST CAUSE OF ACTION

45. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

46. There is a justiciable controversy between the Plaintiff and the Defendant about whether the Defendant has the power or authority to fine the Plaintiff.

47. The Defendant claims that it has the power or authority to fine the Plaintiff.

48. The Defendant does not have the power or authority to fine the Plaintiff.

49. The fine(s) the Defendant claims the Plaintiff owes it are unlawful and invalid.

50. The Plaintiff is entitled to a declaratory judgment that the Defendant does not have the power or authority to fine the Plaintiff and that the fines the Defendant claims the Plaintiff owes it are unlawful and invalid.

FOR A SECOND CAUSE OF ACTION

51. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

52. Contractual penalties are ordinarily unenforceable.

53. Covenantal restrictions on the use of property are contractual in nature.

54. The Defendant's claimed fines against the Plaintiff bear no relation to any damages suffered by the Defendant as the result of any breach or purported breach of the Spring Valley covenants by the Plaintiff.

55. The Defendant's claimed fines against the Plaintiff are an attempt at a penalty for a breach of contract.

56. There is a justiciable controversy between the Plaintiff and the Defendant about whether the Defendant's claimed fines against the Plaintiff are invalid and unenforceable as a matter of law.

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57. The Defendant's claimed fines against the Plaintiff are invalid and unenforceable as a matter of law.

58. The Plaintiff is entitled to a declaratory judgment that Defendant's claimed fines against the Plaintiff are invalid and unenforceable as a matter of law.

FOR A THIRD CAUSE OF ACTION

59. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

60. There is a justiciable controversy between the Plaintiff and the Defendant about whether the Defendant has any right to enforce the covenant about for sale signs.

61. The Defendant's consistent and multiple failures to enforce the covenant about for sale signs in the past amount to a waiver by the Defendant of any right to enforce that covenant.

62. The Defendant voluntarily and intentionally gave up its right to enforce the covenant about for sale signs.

63. The Defendant has let any right it might have had to enforce the covenant about for sale signs lapse.

64. The Plaintiff is entitled to a declaratory judgment that the Defendant does not have any right to enforce the covenant about for sale signs.

FOR A FOURTH CAUSE OF ACTION

65. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

66. There is a justiciable controversy between the Plaintiff and the Defendant about whether the covenant ordinarily prohibiting for sale signs violates public policy by restricting alienation of property in Spring Valley.

67. The covenant ordinarily prohibiting for sale signs violates public policy by restricting alienation of property in Spring Valley.

68. The Plaintiff is entitled to a declaratory judgment that the covenant ordinarily prohibiting for sale signs violates public policy by restricting alienation of property in Spring Valley and is unenforceable.

FOR A FIFTH CAUSE OF ACTION

69. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

70. Actions of the Defendant, including, but not necessarily limited to, those stated in this pleading, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, and were unfair and deceptive actions in trade or commerce. These actions include, but are not necessarily limited to, claiming and filing in the land records notices of invalid and unlawful liens against the Plaintiff and other Spring Valley property owners for purported fines.

71. The Defendant knew or should have known that the said actions were violations of the Unfair Trade Practices Act and were unfair and deceptive actions in trade or commerce.

72. These actions are capable of repetition, including, but not necessarily limited to, in that the Defendant's regular practices allow for and actually foster and encourage such behavior.

73. The Plaintiff has suffered damages as a result of the Defendant's actions.

74. The Plaintiff is entitled to recover from the Defendant actual damages, treble damages, reasonable attorney's fees, and costs.

75. The Plaintiff is entitled to an injunction prohibiting the Defendant from engaging in these actions.

FOR A SIXTH CAUSE OF ACTION

76. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

77. The Defendant slandered the Plaintiff and the Plaintiff's title by recording in the public land records a document that contained false and derogatory statements about the Plaintiff.

78. These statements were published by the Defendant with malice.

79. These statements were published by the Defendant with reckless or wanton disregard of the Plaintiff's rights, without legal justification.

80. These statements have diminished the value of the subject property in the eyes of third parties.

81. The Plaintiff has suffered damages as the consequent and proximate result.

82. The Plaintiff is entitled to recover actual damages, consequential damages, and the costs of this action from the Defendant.

WHEREFORE, the Plaintiff prays:

a) For a declaratory judgment that the Defendant does not have the power or authority to fine the Plaintiff and that the fines the Defendant claims the Plaintiff owes it are unlawful and invalid;

b) For a declaratory judgment that Defendant's claimed fines against the Plaintiff are invalid and unenforceable;

c) For a declaratory judgment that the Defendant does not have any right to enforce the covenant about for sale signs;

d) For a declaratory judgment that the covenant ordinarily prohibiting for sale signs violates public policy by restricting alienation of property in Spring Valley and is unenforceable;

e) For an injunction as described above;

f) For judgment against the Defendant awarding the Plaintiff actual damages;

g) For judgment against the Defendant awarding the Plaintiff punitive damages;

h) For judgment against the Defendant awarding the Plaintiff treble damages;

i) For judgment against the Defendant awarding the Plaintiff all available statutory penalties;

j) For an order dissolving and cancelling of record the notice of lien recorded by the Defendant;

k) For judgment against the Defendant awarding the Plaintiff reasonable attorney's fees;

l) For judgment against the Defendant awarding the Plaintiff the costs of this action; and

m) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

October 15, 2012

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff,	)	Civil Action No.: 2012-CP-40-6974
v.	)	**ANSWER AND COUNTERCLAIM** **(Jury Trial Demanded)**
Spring Valley Homeowners Association, Inc., Defendant.	)	

TO: ANDREW S. RADEKER, ESQUIRE, COUNSEL FOR PLAINTIFF:

The Defendant, answering the Plaintiff's Complaint, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

2. Paragraphs 1 through 11 are admitted.

3. As to paragraphs 12, 13, 14, 15 and 16, Defendant craves reference to the individual deeds as well as the Covenants and Restrictions as to their exact terms and denies each and every allegation inconsistent therewith.

4. Paragraph 17 is denied as stated.

5. Paragraph 18 is denied as stated.

6. As to paragraphs 19 and 20, Defendant admits that the By-Laws were amended pursuant to proper procedure on or about November 8, 2004, and Defendant craves reference to the By-Laws and the amendments as to their exact terms and denies each and every allegation inconsistent therewith.

7. As to paragraph 21, Defendant admits that it adopted rules and regulations pursuant to proper procedure and craves reference to the Rules and Regulations, including any amendments, as to their exact terms and denies each and every allegation inconsistent therewith.

8. As to paragraph 22, Defendant craves reference to the Deed Covenants and Restrictions as to their exact terms and denies each and every allegation inconsistent therewith.

9. Paragraph 23 is denied.

10. Paragraphs 24, 25 and 26 are denied, upon information and belief.

11. As to paragraph 27, Defendant admits that Plaintiff knowingly violated the Deed Covenants and Restrictions by placing a "for sale" sign in his yard without seeking prior approval from Defendant, and Plaintiff only sought approval after placing the sign in his yard in violation of the Deed Covenants and Restrictions.

12. Paragraph 28 is denied, upon information and belief.

13. Paragraph 29 is denied.

14. Paragraph 30 is admitted, but Defendant would show that Plaintiff placed the "for sale" sign in his yard in knowing violation of the Deed Covenants and Restrictions without seeking prior approval from Defendant.

15. As to paragraph 31, Defendant admits that it sent Plaintiff a letter on or about October 4, 2011, stating, in part, the quoted language, and Defendant would crave reference to the October 4, 2011 letter as to its full contents and denies each and every allegation inconsistent therewith.

16. As to paragraphs 32 and 33, Defendant admits that attorney Andrew Radeker wrote a letter dated October 23, 2011, to Carl Voges, General Manager of the Spring Valley Homeowners' Association, disagreeing with Defendant's position stated in its October 4, 2011

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correspondence, and Defendant craves reference to the October 23, 2011 letter as to its exact contents, and Defendant denies each and every allegation inconsistent therewith.

17. Paragraph 34 is admitted.

18. As to paragraph 35, Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 35 and therefore denies the same and demands strict proof thereof.

19. As to paragraph 36, Defendant lacks sufficient knowledge to know exactly to which letter plaintiff is referring, but Defendant admits that it did receive a letter dated December 8, 2011 from attorney Andrew Radeker stating his position concerning the power to levy fines, and Defendant craves reference to the December 8, 2011 letter as to its exact contents and denies each and every allegation inconsistent therewith.

20. Paragraph 37 is admitted.

21. As to paragraph 38, Defendant admits that its counsel sent Plaintiff a letter on April 9, 2011 attempting to collect the debt owed by Plaintiff, which in part includes the quoted language, and Defendant would crave reference to the letter as to its full contents and would deny each and every allegation inconsistent therewith.

22. As to paragraph 39, Defendant admits that the document entitled "Notice Required by the Fair Debt Collection Practices Act, 15 U.S.C. §1601, as Amended" was attached to the April 9, 2012 letter and the document in part contains the quoted language, and Defendant would crave reference to the document as to its exact contents and would deny each and every allegation inconsistent therewith.

23. Paragraphs 40, 41 and 42 are admitted.

24. As to paragraph 43, Defendant craves reference to the Notice and Certificate of Lien for Homeowners' Fees recorded on September 13, 2012 with the Richland County Register of Deeds and denies each and every allegation inconsistent therewith.

25. Paragraph 44 is denied as stated.

26. As to paragraph 45, Defendant repeats and reiterates each and every defense raised in paragraphs 1 through 25 above as fully as if set forth verbatim herein.

27. Paragraphs 46 is denied in that the power to levy fines is clearly set forth in the Rules, Deeds, Covenants and Restrictions adopted by the Defendant to which Plaintiff has already admitted to be bound.

28. Paragraph 47 is admitted.

29. Paragraphs 48, 49 and 50 are denied.

30. As to paragraph 51, Defendant repeats and reiterates each and every defense raised in paragraphs 1 through 29 above as fully as if set forth verbatim herein.

31. To the extent paragraphs 52 and 53 are allegations of law, Defendant is not required to admit or deny those paragraphs; subject to the above, paragraphs 52 and 53 are denied to the extent that anything alleged therein conflicts with the applicable law of this State.

32. Paragraphs 54 and 55 are denied.

33. Paragraph 56 is denied in that the power to levy fines is clearly set forth in the Rules, Deeds, Covenants and Restrictions adopted by the Defendant to which Plaintiff has already admitted to be bound.

34. Paragraphs 57 and 58 are denied.

35. As to paragraph 59, Defendant repeats and reiterates each and every defense raised in paragraphs 1 through 34 above as fully as if set forth verbatim herein.

36. Paragraph 60 is denied in that the power to levy fines is clearly set forth in the Rules, Deeds, Covenants and Restrictions adopted by the Defendant to which Plaintiff has already admitted to be bound.

37. Paragraphs 61, 62, 63 and 64 are denied.

38. As to paragraph 65, Defendant repeats and reiterates each and every defense raised in paragraphs 1 through 37 above as fully as if set forth verbatim herein.

39. Paragraph 66 is denied in that the power to levy fines is clearly set forth in the Rules, Deeds, Covenants and Restrictions adopted by the Defendant to which Plaintiff has already admitted to be bound.

40. Paragraphs 67 and 68 are denied.

41. As to paragraph 69, Defendant repeats and reiterates each and every defense raised in paragraphs 1 through 40 above as fully as if set forth verbatim herein.

42. Paragraphs 70, 71, 72, 73, 74 and 75 are denied.

43. As to paragraph 76, Defendant repeats and reiterates each and every defense raised in paragraphs 1 through 42 above as fully as if set forth verbatim herein.

44. Paragraphs 77, 78, 79, 80, 81 and 82 are denied.

FOR A SECOND DEFENSE
(Business Judgment Rule)

45. The Defendant would show, upon information and belief, that its actions are subject to the Business Judgment Rule, and the Defendant asserts the Business Judgment Rule as a defense to the Plaintiff's claims, and for that reason, Plaintiff cannot recover from Defendant in any sum whatsoever.

FOR A THIRD DEFENSE
(Compliance with S.C. Code Ann. §33-31-830)

46. The Defendant would show, upon information and belief, that the Defendant, acting through its Board of Directors, complied with the applicable standard of care set forth in S.C. Code Ann. §33-31-830; therefore, Plaintiff cannot recover from Defendant in any sum whatsoever.

FOR A FOURTH DEFENSE
(Plaintiff's Fifth Cause of Action Asserting a Violation of the South Carolina Unfair Trade Practices Act Fails to State Facts Sufficient to Constitute a Cause of Action against Defendant – Rule 12(b)(6))

47. The Defendant would show, upon information and belief, that Plaintiff's Fifth Cause of Action attempting to assert a violation of the South Carolina Unfair Trade Practices Act, fails to state facts sufficient to constitute a cause of action against Defendant because as a matter of law, Defendant was not engaged in "trade" or "commerce" in the enforcement of the Deed Restrictions and Covenants; therefore, the South Carolina Unfair Trade Practices Act is inapplicable and Plaintiff's Fifth Cause of Action must be dismissed pursuant to Rule 12(b)(6).

FOR A FIFTH DEFENSE
(Absolute or Qualified Privilege)

48. The Defendant would show, upon information and belief, that its actions are absolutely privileged and/or qualifiedly privileged under South Carolina law; therefore, Plaintiff cannot recover from Defendant any sum whatsoever for slander and slander of title as set forth in his Sixth Cause of Action.

FOR A SIXTH DEFENSE
(Punitive Damages)

49. The Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the

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Defendant could be subjected to multiple awards of punitive damages for the same set of facts, the self-incrimination clause is being violated because the Defendant can be compelled to give testimony against himself in a penalty situation such as punitive damages, the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature, Plaintiff's claim for punitive damages violates the Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendant's exercise of that right, the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, and the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards and, therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A SEVENTH DEFENSE
(Waiver and Estoppel)

50. Upon information and belief, Plaintiff purchased the subject property on August 31, 2007. When Plaintiff purchased the subject property he was on notice of the existence of the Defendant as well as the Rules, Covenants and Restrictions that bound the property including the 2004 amendment to the By-Laws allowing for the imposition of fines by the Defendant. Plaintiff made no objection to the Rules, Covenants and Restrictions binding the Property including the ability of the Defendant to levy fines and knowingly waived any such objections when he took possession of the Property and agreed to the terms of the Rules, Bylaws, Deed, Covenants and Restrictions and all amendments thereto. Further, Plaintiff is now estopped from challenging or

objecting to the Rules, Bylaws, Deed, Covenants and Restrictions, including all amendments thereto.

FOR AN EIGHTH DEFENSE
(Statute of Limitations)

51. Upon information and belief, Plaintiff purchased the subject property on August 31, 2007. When Plaintiff purchased the subject property he was on notice of the existence of the Defendant as well as the Rules, Covenants and Restrictions that bound the property including the 2004 amendment to the By-Laws allowing for the imposition of fines by the Defendant. Plaintiff made no objection to the Deed, Rules, Covenants and Restrictions binding the Property including the ability of the Defendant to levy fines until October of 2011, therefore, his claims are barred by the applicable statute of limitations.

FOR A NINTH DEFENSE
(Laches)

52. Upon information and belief, Plaintiff purchased the subject property on August 31, 2007. When Plaintiff purchased the subject property he was on notice of the existence of the Defendant as well as the Rules, Covenants and Restrictions that bound the property including the 2004 amendment to the By-Laws allowing for the imposition of fines by the Defendant. Plaintiff made no objection to the Deed, Rules, Covenants and Restrictions binding the Property including the ability of the Defendant to levy fines until October of 2011. Plaintiff's delay in challenging the Bylaws, Rules, Covenants and Restrictions was unreasonable under the circumstances and has resulted in prejudice to Defendant. Consequently, Plaintiff's claims are barred by the doctrine of Laches.

FOR A TENTH CAUSE OF ACTION BY WAY OF COUNTERCLAIM

53. Plaintiff and Anne Carlson are the owners of the subject property and are bound by the Rules, Deeds, Bylaws Covenants and Restrictions binding the property including all

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amendments and alterations which form a binding contract by and between Plaintiff and Defendant.

54. The purpose of the Rules, Deeds, Bylaws Covenants and Restrictions binding the property was (among other things) to create a common scheme amongst the properties in the Spring Valley subdivision and to provide a method by which that common scheme may be enforced.

55. When Plaintiff took possession of the property he knew of the purpose of the Rules, Deeds, Bylaws Covenants and Restrictions binding the property.

56. Upon information and belief, Plaintiff knew that the authority of Defendant to levy fines under the Rules, Deeds, Bylaws Covenants and Restrictions binding the property was in place as a method to enforce the common scheme anticipated in that contract and thus contractually bound himself to the authority of the Defendant to levy fines against all owners.

57. The Rules, Deeds, Bylaws Covenants and Restrictions binding the property restrict the use of signs on property.

58. Plaintiff placed a for sale sign in his yard in violation of the Rules, Deeds, Bylaws Covenants and Restrictions binding the property.

59. Defendant notified Plaintiff of the violation in writing and requested that the sign be removed.

60. Plaintiff, knowing that the sign was in violation of the Rules, Deeds, Bylaws Covenants and Restrictions binding the property, sought a hardship waiver for the violation.

61. Defendant, in accordance with the process set forth in the Rules, Deeds, Bylaws Covenants and Restrictions binding the property, denied the hardship waiver and again requested that the sign be removed.

62. Defendant warned Plaintiff that his breach of the Rules, Deeds, Bylaws Covenants and Restrictions binding the property would result in Plaintiff being subject to a fine.

63. Knowing he was in violation of the Rules, Deeds, Bylaws Covenants and Restrictions binding the property and subject to potential fines, Plaintiff refused to remove the sign.

64. Defendant levied fines against Plaintiff in the amount of $500 in accordance with the process set forth in the Rules, Deeds, Bylaws Covenants and Restrictions binding the property.

65. Plaintiff has failed to fulfill his obligations under the Rules, Deeds, Bylaws Covenants and Restrictions binding the property by paying the $500 owed to the Defendant.

66. The Rules, Deeds, Bylaws Covenants and Restrictions binding the property call for the reimbursement of attorney fees and costs involved in the collection of the debt owed by Plaintiff

COUNTERCLAIM #1
(Breach of Contract/Covenant Enforcement)

67. Plaintiff, by taking possession of the property contractually agreed to pay all fees issued in accordance with the Rules, Deeds, Bylaws Covenants and Restrictions binding the property including all amendments and alterations thereto.

68. Plaintiff knowingly and intentionally breached his contractual obligations under the Rules, Deeds, Bylaws Covenants and Restrictions binding the property by placing a for sale sign on his property.

69. Despite having been given every opportunity to comply with the Rules, Deeds, Bylaws Covenants and Restrictions binding the property and warned of the consequences of his

breach, Plaintiff intentionally and knowingly continued to breach his obligations the Rules, Deeds, Bylaws Covenants and Restrictions binding the property.

70. Defendant, by virtue of its authority under the Rules, Deeds, Bylaws Covenants and Restrictions binding the property Plaintiff issued a fine against Plaintiff for $500.

71. Plaintiff has failed to meet its contractual obligations by failing to pay the fine.

72. Defendant has been damaged in that Plaintiff has failed to pay the $500 owed to Defendant.

73. Defendant suffered further damage in that Plaintiff's continual refusal to act in accordance with the Rules, Deeds, Bylaws Covenants and Restrictions binding the property threatens the common scheme and diminishes property values in the Spring Valley Subdivision in an amount to be proven at trial.

74. Defendant has suffered damages in the payment of attorney fees and costs associated with the defense of this action as well as the collection of the fine in an amount to be proven at trial.

WHEREFORE, the Defendant, having answered the Complaint of the Plaintiff, would respectfully request that the Plaintiff's Complaint be dismissed with costs, that it be awarded all relief sought in its Counterclaim, and for such other and further relief as the Court deems just and proper. Defendant demands a jury trial in this matter.

BROWN & BREHMER

By: _____

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Attorneys for Defendant

Columbia, South Carolina
December 14, 2012

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO. 2012-CP-40-6974
S. Coley Brown, Plaintiff, vs. Spring Valley Homeowners Association, Inc., Defendant.	REPLY TO ANSWER AND COUNTERCLAIM

RICHLAND COUNTY
FILED
2013 JAN 15 PM 3:45
ANNETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, replying to the affirmative assertions and allegations of the Answer and Counterclaim of the Defendant, replies and alleges as follows:

FOR A FIRST REPLY AND DEFENSE

1. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

2. Any affirmative assertions and allegations of the Answer and Counterclaim not herein admitted, qualified, or explained are denied. Any affirmative assertions and allegations of the Answer and Counterclaim subject of qualified admissions made herein are denied insofar as the affirmative assertions and allegations are not qualifiedly admitted, and any affirmative assertions and allegations of the Answer and Counterclaim subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

FOR A SECOND REPLY AND DEFENSE

3. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

4. Replying to the affirmative assertions and allegations of paragraphs 6, 7, 54, 55, and 57 of the Answer and Counterclaim, the Plaintiff lacks sufficient knowledge or information to form a belief as to the truth or falsity of the same.

5. Replying to the affirmative assertions and allegations of paragraphs 11, 14, 27, 33, 36, 39, 45, 46, 47, 48, 49, 51, 56, 61, 65, 68, 69, 70, 71, 72, 73, and 74 of the Answer and Counterclaim, the Plaintiff denies the same.

6. Replying to the affirmative assertions and allegations of paragraphs 15, 16, and 22 of the Answer and Counterclaim, the Plaintiff admits the same.

7. Replying to the affirmative assertions and allegations of paragraphs 53, 58, 59, 62, 63, 66, and 67 of the Answer and Counterclaim, the Plaintiff denies the same as written.

8. Replying to the affirmative assertions and allegations of paragraph 19 of the Answer and Counterclaim, the Plaintiff denies that the "Defendant lacks sufficient knowledge or information to know exactly to which letter plaintiff is referring" and the Plaintiff admits that the "Defendant admits that it did receive a letter dated December 8, 2011 from attorney Andrew Radeker stating his position concerning the power to levy fines[.]"

9. Replying to the affirmative assertions and allegations of paragraph 21 of the Answer and Counterclaim, the Plaintiff admits that the "Defendant admits that its counsel sent Plaintiff a letter on April 9, 2011 attempting to collect" unlawful purported fines, but the Plaintiff denies that he owes or owed any debt to the Defendant.

10. Replying to the affirmative assertions and allegations of paragraphs 50 and 52 of the Answer and Counterclaim, the Plaintiff admits the allegation of the date of his purchase of the subject property to the extent that the allegation is consistent with the content of the public record and denies the remaining affirmative assertions and allegations.

11. Replying to the affirmative assertions and allegations of paragraph 60 of the Answer and Counterclaim, the Plaintiff admits that sought to show that he was undergoing hardship such that any prohibition against him placing a for sale sign on his property should not apply to him and the Plaintiff denies the remaining affirmative assertions and allegations.

12. Replying to the affirmative assertions and allegations of paragraph 64 of the Answer and Counterclaim, the Plaintiff admits the Defendant attempted to levy fines in the amount of $500.00 but denies the remaining affirmative assertions and allegations.

13. With regard to the prayer stated in the Answer and Counterclaim, no response thereto is necessary, but the Plaintiff denies that the Defendants are entitled to any relief claimed in the prayer.

FOR A THIRD REPLY AND DEFENSE

14. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

15. With regard to the counterclaims attempted to be asserted in the Answer and Counterclaim, the Answer and Counterclaim fails to state facts sufficient to constitute a cause of action.

16. The counterclaims attempted to be asserted in the Answer and Counterclaim should be dismissed.

FOR A FOURTH REPLY AND DEFENSE

17. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

18. All assertions and allegations of the Complaint that, together or separately, constitute a defense or defenses to the counterclaim pled in the Answer and Counterclaim incorporated herein by reference as if here set forth verbatim.

FOR A FIFTH REPLY AND DEFENSE

19. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

20. The Defendant has engaged in such conduct with respect to the matters subject of this action as to make its hands unclean with regard to the same.

21. This conduct includes, but is not necessarily limited to, engaging in the acts subject of the Plaintiff's Complaint and providing an "Information Guide" to the Plaintiff when he purchased property in Spring Valley that did not mention any purported power or authority of the Defendant to levy fines.

22. This conduct by the Defendant relatse directly to the subject matter of this action.

23. The Defendant's said conduct has proximately caused the Plaintiff prejudice and injury.

FOR A SIXTH REPLY AND DEFENSE

24. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

25. While the Plaintiff denies that he unlawfully caused any damage to the Defendant, even if he had, the Defendants' counterclaims would be barred or diminished by its failure to mitigate its damages.

FOR A SEVENTH REPLY AND DEFENSE

26. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

27. The Defendant seeks an award against the Plaintiff on the basis of its own illegal acts.

28. This illegality bars any counterclaim by the Defendant.

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WHEREFORE, the Plaintiff prays:

a. For the relief sought in the Plaintiffs' Complaint;

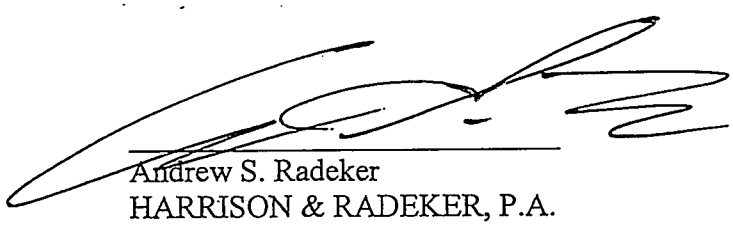
b. For the denial of the relief sought by the Defendant;

c. For the dismissal of any counterclaim raised or attempted to be raised in the Answer and Counterclaim;

d. For the dismissal of any affirmative defenses raised or attempted to be raised in the Answer and Counterclaim; and

e. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
January 14, 2013

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO. 2012-CP-40-6974
S. Coley Brown, **Plaintiff,** **vs.** **Spring Valley Homeowners Association, Inc.,** **Defendant.**	**MOTION FOR SUMMARY JUDGMENT**

RICHLAND COUNTY FILED
2013 OCT -8 PM 1:58
JEANETTE W. McBRIDE C.C.P. & G.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves before this Court pursuant to Rule 56, SCRCP, for an Order granting summary judgment in favor of the Plaintiff and against the Defendant as to liability in this action.

Plaintiff so moves on the following grounds:

1. Upon motion, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP.
2. The record in this action shows that there is no genuine issue as to any material fact as to the Plaintiff's claims in this action and that the Plaintiff is entitled to judgment in his favor on liability on his claims as a matter of law.
3. The record in this action also shows that there is no genuine issue as to any material fact as to the Defendant's claims and defenses in this action and that the Plaintiff is entitled to judgment in his favor on liability on those claims as a matter of law.
4. The Plaintiff has sued the Defendant seeking a declaratory judgment that the Defendant, a homeowner's association, has no power or authority to fine the Plaintiff; for violation of

the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.* in connection with the Defendant assessing a fine against the Plaintiff and recording a notice of lien claiming a lien for the amount of the fines; and for slander of title in connection with the Defendant recording a notice of lien stating that the Plaintiff owes the Defendant in the amount of the fines subject of this case and that the Defendant holds a lien on the Plaintiff's property for the same. The Defendant has raised several defenses to Plaintiff's causes of action and one counterclaim for breach of contract and covenant enforcement. Both the Plaintiff's and the Defendant's claims in this matter are so tied to a common question of law – whether the Defendant, a homeowners' association, has the power and authority to fine its members – that a determination of that question would resolve this case as to issues of liability.

5. Plaintiff's first four causes of action seek four declaratory judgments:
    a. That the Defendant does not have the power or authority to fine the Plaintiff and that the fines the Defendant claims the Plaintiff owes it are unlawful and invalid;
    b. That the Defendant's claimed fines are invalid and unenforceable;
    c. That Defendant does not have any right to enforce the covenant concerning for sale signs; and
    d. That the covenant ordinarily prohibiting for sale signs violates public policy by unlawfully restricting alienation of property and is unenforceable.
6. The resolution in favor of the Plaintiff of any one of Plaintiff's first four causes of action would be dispositive of the Plaintiff's other causes of action.
7. There is no issue of material fact in this case that is relevant to any dispositive legal issue.
8. The power to levy fines is a power of the sovereign, i.e., a governmental power.

9. The Defendant is not a government entity.

10. No federal, state, county, or municipal government has delegated to the Defendant any power to levy fines.

11. The restrictive covenants at issue provide that property owners in Spring Valley are obligated to pay to the Defendant periodic assessments for the purpose of maintenance of Spring Valley's streets, roads, storm drains, common areas, and security services.

12. These covenants provide that those periodic assessments shall constitute a lien on the subject property, as well as a personal obligation of the property owner and every succeeding owner.

13. These covenants do not state that the Defendant has any power or authority to fine owners of property in Spring Valley.

14. The only liens in favor of the Defendant that are provided for in the covenants are liens for periodic assessments for maintenance.

15. Fines are not assessments.

16. The Defendant does not have the power or authority to fine a Spring Valley property owner for a violation of deed restrictions.

17. Contractual penalties are ordinarily unenforceable.

18. Covenantal restrictions on the use of property are contractual in nature.

19. The Defendant's claimed fines against the Plaintiff bear no relation to any damages suffered by the Defendant as the result of any breach or purported breach of the Spring Valley covenants by the Plaintiff.

20. The Defendant's claimed fines against the Plaintiff are an attempt at a penalty for a breach of contract.

21. The fines are invalid and unenforceable as a matter of law.

22. The covenant ordinarily prohibiting for sale signs violates public policy by unlawfully restricting alienation of property and is unenforceable.

23. The prior conduct of the Defendant shows that any right it may have had to enforce the covenants prohibiting for sale signs has been waived.

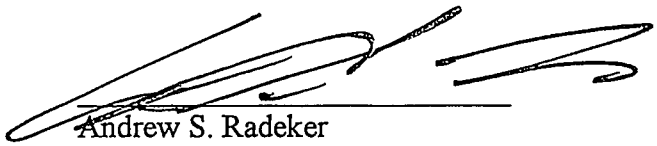
24. Further inquiry into the facts of this case is not needed to clarify the application of law to either Plaintiff's causes of action or Defendant's defenses and counterclaim.

25. If summary judgment is not granted in favor of the Plaintiffs' entire case, the Court should grant partial summary judgment and identify which of the causes of action or counterclaims in this action present a genuine issue of material fact for trial. Rule 56(d), SCRCP.

26. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action (including, but not limited to the Affidavit of S. Coley Brown, the Plaintiff's First Set of Requests to Defendant to Admit, and the Defendant's responses to the Plaintiff's First Set of Requests to Defendant to Admit, all of which are filed herewith and have been served in this case), as well as any memoranda the Plaintiff may submit.

Pursuant to Rule 11, SCRCP, there is no duty of consultation prior to this motion, because this is a motion for summary judgment.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
October 8, 2013

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v.	)	Civil Action No.: 2012-CP-40-6974
Spring Valley Homeowners Association, Inc., Defendant.	)	**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for the Defendant will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Courthouse at 10:00 a.m. on the 10th day after service hereof or as soon thereafter as possible for an Order granting summary judgment to the Defendant.

The grounds for this motion are as follows: As to Plaintiff's causes of action for declaratory judgment (Causes of Action 1 through 4), the Defendant would show that there is no genuine issue as to any material fact and the Defendant is entitled to a judgment as a matter of law. More specifically, as a matter of law, the Defendant has the power and authority to fine the Plaintiff, the fine assessed against the Plaintiff is not an unenforceable penalty, the Defendant has not waived its right to enforce the covenants and restrictions, and the deed restriction concerning "for sale" signs does not violate public policy as an unreasonable restriction on the alienation of property.

Additionally, there is no genuine issue as to any material fact as to Plaintiff's Fifth and Sixth Causes of Action; therefore, the Defendant is entitled to a judgment as a matter of law. Specifically, Defendant would show that it is protected by the Business Judgment Rule and S.C. Code Ann. § 33-31-830 and is entitled to a judgment as a matter of law. Further, the Defendant is not engaged in "trade or commerce", thus the South Carolina Unfair Trade Practices Act is inapplicable to the Defendant. Further, the Plaintiff has not and cannot come forward with any evidence supporting its

claims of unfair trade practices and slander of title; thus, such claims must be dismissed as a matter of law. Further, Defendant is entitled to summary judgment for those further grounds set forth in its Answer to Plaintiff's Complaint and for such further grounds as may be asserted in any Memorandum of Law submitted in advance of the hearing on this motion.

BROWN & BREHMER

By: _____

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Attorneys for Defendant

Columbia, South Carolina
October 28, 2013

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO. 2012-CP-40-6974
S. Coley Brown, **Plaintiff,** **vs.** **Spring Valley Homeowners Association, Inc.,** **Defendant.**	**MOTION TO RECONSIDER**

RICHLAND COUNTY FILED
2014 JUN 19 PM 3:39
JEANETTE W. McBRIDE C.C.P. & S.S.

YOU WILL PLEASE TAKE NOTICE YOU WILL PLEASE TAKE NOTICE that the Plaintiff moves before this court pursuant to Rules 52(b) and 59(e), SCRCP, as well as pursuant to all other applicable law, in the above-captioned action for an order that reconsiders, clarifies, and/or alters or amends this court's order filed April 3, 2014[1], that granted the Defendant's motion for summary judgment and denied the Plaintiff's motion for summary judgment.

The grounds for this motion are more particularly shown in the attached memorandum, which is incorporated herein by reference as if here set forth verbatim. All arguments contained in the Plaintiff's written motion for summary judgment, the Plaintiff's oral argument at the hearing on the summary judgment motions, the Plaintiff's memorandum regarding the summary judgment motions, and the Plaintiff's correspondence with the court are also incorporated herein by reference as if here set forth verbatim.

Pursuant to Rule 11, SCRCP, there is no duty of consultation prior to this motion, as this is a motion to reconsider that is made for, *inter alia*, issue preservation purposes; thus, consultation would have served no useful purpose.

[1] The Plaintiff received written notice of the entry of this order on June 9, 2014.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
June 19, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS CASE NO. 2012-CP-40-6974
S. Coley Brown, Plaintiff, vs. Spring Valley Homeowners Association, Inc., Defendant.	MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER

JEANNETTE W. McBRIDE
C.C.P. & G.S.
2014 JUN 19 PM 3:39
RICHLAND COUNTY
FILED

The Plaintiff submits this memorandum in support of his motion for an order that reconsiders, clarifies, and/or alters or amends this court's order filed April 3, 2014[1], that granted the Defendant's motion for summary judgment and denied the Plaintiff's motion for summary judgment in the above-captioned action. The decision rendered in that order was grounded in errors of law.

At the crux of this case is whether, in the absence of any statute or even any restrictive covenant that so provides, a private entity may impose a punishment on another private entity (a natural person) that historically has been and normally is meted out only by the sovereign as a sentence for a criminal infraction.

THE STATE HAS NOT DELEGATED ITS POWER TO FINE TO PROPERTY OWNERS' ASSOCIATIONS

Consistently with common understanding and what appears to be universal agreement in our nation's jurisprudence, Black's Law Dictionary defines "fine" as "[a] pecuniary criminal punishment or civil penalty payable to the public treasury." Black's Law Dictionary 284 (2d pocket ed 2001). In a 2012 case involving a fine, the Supreme Court of the United States

[1] The Plaintiff received written notice of the entry of this order on June 9, 2014, as shown by the email message of that date attached hereto.

discussed other cases involving "imprisonment or a death sentence" and noted that the distinction between those forms of punishment and fines was immaterial to the issue at hand, stating that "fines, like these other forms of punishments, are penalties inflicted by the sovereign for the commission of offenses." So. Union Co. v. U.S., ___ U.S. ____, 132 S.Ct. 2344, 2350 (2012). "Bail, fines, and punishment traditionally have been associated with the criminal process," as our nation's Supreme Court stated on another occasion. Ingraham v. Wright, 430 U.S. 651, 664 (1977). "Fines were by far the most common form of noncapital punishment in colonial America." So. Union, 132 S.Ct. at 2350. At the time of the drafting and adoption of the Constitution of the United States, "the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense. Then, as now, fines were assessed in criminal, rather than private civil, actions." Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, 492 U.S. 257, 265 (1989).

South Carolina law is consistent with this. In State v. Stevens, our state Supreme Court appeared to reject rather roundly the idea of a fine being paid to the prosecutor of a criminal case rather than to the government. 116 S.C. 210, 211, 107 S.E. 906 (1921). Our Supreme Court also has also noted that "[a] fine is usually a sum of money exacted from a person guilty of a crime as pecuniary punishment[.]" S.C. State Hwy. Dept. v. So. Ry. Co., 239 S.C. 227, 230, 122 S.E.2d 422, 424 (1961).

As noted by the Supreme Court of Virginia, "[t]he imposition of a fine is a governmental power. The sovereign cannot be preempted of this power, and the power cannot be delegated or exercised other than in accordance with the provisions of the Constitution of the United States and of [the state (there, Virginia)]." Unit Owners Assn. of BuildAmerica-1 v. Gillman, 223 Va. 752, 764, 292 S.E.2d 378, 384 (1982).

The South Carolina General Assembly has not delegated to property owners' associations any power to impose fines. South Carolina has enacted the Horizontal Property Act, S.C. Code Ann. §§ 27-31-10 - -440, but this Act does not empower any such association to levy fines for anything. A writer on South Carolina law on this subject has noted that "[c]ommentaries have expressed doubt about the legality of levying fines in the absence of statutory authority, of which there is none in the SCHPA [the Horizontal Property Act]. The courts generally agree that absent statutory authorization a council of co-owners may not levy fines." Douglas Scott MacGregor, Condominium Law in South Carolina 49 (3d ed. 2013).

The deed restrictions at issue in this case do not appear to have been made pursuant to the Horizontal Property Act, in any event, as the Defendant was keen to point out and which the court appears to have used as a basis for its ruling. The Plaintiff is unsure why the Defendant took the trouble to remark that the covenantal restrictions at issue are not promulgated pursuant to the Horizontal Property Act. To do so only points out that there is absolutely no statute from which the Defendant could even argue any interpretation at all, even a plainly incorrect one, that our legislature has empowered homeowners' associations to levy fines. This absence of a statutory scheme governing the Defendant association simply illustrates, yet again, that there exists no legal authority for the Defendant to impose fines. There is no authority for a homeowners association to fine people that can arise purely from "deed covenants and restrictions, the bylaws, and common law[,]" as the court reasoned is the case here. At common law, the power to fine is vested solely in the sovereign. So. Union, 132 S.Ct. at 2350; Browning-Ferris Indus., 492 U.S. at 265; Ingraham, 430 U.S. at 664; S.C. State Hwy. Dept., 239 S.C. at 230; Stevens, 116 S.C. at 211. It is not a question of homeowners' associations being "constrained to act[,]" as the court put it. Replacing the word "fine" with the word "imprison"

this illustrates the fallacy of the Defendant's position and the court's reasoning that adopted it. While imprisonment is often more harsh than the imposition of a fine, there is no difference between these punishments that is material to the outcome of this case. They are both punishments that the sovereign is exclusively empowered to impose. So. Union, 132 S.Ct. at 2350; Ingraham, 430 U.S. at 664.

As the above-quoted South Carolina writer notes, there is wide agreement by courts that have addressed the issue of whether a homeowners' association can fine its members in the absence of statutory authorization to do so. Wise v. Harrington Grove Community Assn., 357 N.C. 396, 584 S.E.2d 731 (2003) (until enactment of statute that delegated power to fine to homeowners' associations, those associations had no such power); Holbert v. Great Gorge Village South Condominium Council, Inc., 281 N.J.Super. 22, 656 A.2d 1315 (1994)(absent statutory authorization, association could not levy fines, impose penalties, or charge late fees for failure to pay common expenses); Elbadramany v. Oceans Seven Condominium Assn., 461 So.2d 1001 (Fla. 5th DCA 1984); Gillman, 223 Va. At 764; Vernon Manor Co-op Apts., Section I v. Salatino, 178 N.Y.S.2d 895 (1958); see Stewart v. Kopp, 454 S.E.2d 672 (N.C. App. 1994) (where North Carolina's condominium statute *did* authorize fines and declaration of covenants incorporated the statute, association could levy fines for rule violation). In short, courts across the country generally agree that the power to impose fines, as a governmental function, cannot be exercised by a private actor unless the sovereign has expressly delegated the exercise of that power. See id.

The court's reliance in its order on the powers of nonprofit corporations set out in S.C. Code Ann. §§ 33-31-206 and -302 is unavailing. Our General Assembly provided in S.C. Code Ann. § 33-31-206 that a nonprofit corporation's "bylaws may contain any provision for

regulating and managing the affairs of the corporation that is *not inconsistent with law* or the articles of incorporation." (Emphasis added). As a matter of law, the power to fine is vested solely in the government, absent a delegation of that power (which has not been made in this state). See, e.g., So. Union, 132 S.Ct. at 2350; S.C. State Hwy. Dept., 239 S.C. at 230; Gillman, 223 Va. at 764. Enshrining a purported power to fine in association bylaws *is* inconsistent with law.

Further, the plain language of S.C. Code Ann. § 33-31-302, upon which the Defendant relied and the court now relies, provides that a nonprofit corporation "has the same powers *as an individual*" – not a governmental entity – "to do all things necessary or convenient to carry out its affairs[.]" (Emphasis added). Individuals are not governments; they do not have the power to levy fines. As noted at the hearing in this case, since the undersigned individual has no power or authority to fine people, neither can the Defendant homeowners' association have such a power.

"[A] corporation cannot impose an assessment or fine for a violation of its by-laws unless it is expressly authorized by statute." Vernon Manor Co-op Apts, 178 N.Y.S.2d at 902 (internal citations omitted). The court ruled that an amendment to the Defendant's bylaws purporting to authorize the Defendant to fine was "duly adopted in 2004": however, such a provision could not have been *duly* adopted, as it could not have been lawfully adopted. The law does not countenance the usurpation of a government power by a private entity.

A number of states have enacted statutes that delegate the power to fine to associations of property owners. E.g., N.C.G.S. § 47F-1-102, Nev. Rev. Statutes § 116.310305, Fla. Code § 718.303(3), Ga. Code Ann. § 85-1613e. South Carolina is not among them. The Defendant acknowledged in its supplemental memorandum that the authority it cited for the proposition that other states' law permits homeowners' associations to fine there members comes from states

where statutes have been enacted to expressly permit this to occur. In South Carolina, unless and until our legislature changes the law, homeowners' associations lack any power or authority to impose fines on their members. There is no reason for South Carolina to depart from the general – and apparently universal – rule, recognized in other jurisdictions, that a homeowners' association cannot fine its members unless a statute has been enacted that authorizes it to do so. The reason that other jurisdictions recognize this principle is not because of quirky differences in those states' law and South Carolina law. The reason for the recognition of this principle in other jurisdictions is because it is correct and is founded in the basic, fundamental conception of what a fine is: a punishment that a government, and only a government, may impose.

It is plain, despite the court's declaration otherwise, that the fining provisions of the Defendant's bylaws do violate public policy.

IF THE FINE IS REALLY A PENALTY, IT IS STILL AN UNENFORCEABLE ONE

The Defendant argued that the fines at issue are permissible contractual penalties. While *fines* (government-imposed sentences of monetary payment) are not exactly the same thing as contractual penalties, S.C. State Hwy. Dept., 239 S.C. at 230, the Defendant's claimed fining power fails to meet the requirements of what makes an enforceable liquidated damages provision different from an unenforceable penalty.

If a contract's purported stipulation of liquidated damages owed in the event of breach of the contract actually constitutes a penalty, it will not be enforced. Foreign Academic & Cultural Exch. Servs., Inc. v. Tripon, 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011); Tate v. Le Master, 231 S.C. 429, 442, 99 S.E.2d 39, 46 (1957). Courts look principally to the intent of the parties to the contract in determining whether a provision constitutes a penalty, usually by looking to the language used in the document. Tate, 231 S.C. at 429; ERIE Ins. Co. v. Winter Consrt. Co., 393

S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011). Where the stipulation "is reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reason of nonperformance, the stipulation is for liquidated damages." Tate, 231 S.C. at 440. "However, where the stipulation is not based upon contemplated actual damages but *is intended to provide punishment for breach of the contract*, it is a penalty." Moser v. Gosnell, 334 S.C. 425, 432, 513 S.E.2d 123, 126 (Ct. App. 1999) (emphasis added).

Here, the amended by-laws at issue plainly refer to the fines as fines. The nature of fines is that they are punitive measures, not an attempt to compensate for actual losses. The fines are the same regardless of which restriction or rule's violation leads to a fine being imposed. They relate in no way to damages, rather, they are intended to provide punishment.

Also, what we do *not* have here is a situation in which the Plaintiff entered into a contract with the Defendant that provided for the Defendant to fine the Plaintiff in certain circumstances. Instead, what is here are covenantal restrictions in a deed that nowhere mention fines or penalties. The claimed fining power purports to come from a change to corporate by-laws, not from an agreement between the Plaintiff and the Defendant. Even if it did result from the latter, however, it would still bear plainly the hallmarks of an unenforceable penalty.

EVEN IF IT WERE POSSIBLE FOR AN HOA TO FINE A PROPERTY OWNER, IT IS NOT POSSIBLE FOR *THIS* HOA TO FINE ANYONE

Here, neither the law (as discussed above) nor the covenants state that the Defendant has the power to fine anyone. Even if it were possible for homeowners' associations to fine people in this State, *this* homeowners' association could not do so, as the covenants at issue do not say that they empower or authorize the levying of any fine. To purport to fine someone for violating the covenants is not "appropriate legal action."

The South Carolina Court of Appeals upheld in 2011 the ruling of a master-in-equity that held that a homeowners' association's rules could not exceed the scope of what was permitted in the declaration of its governing covenants. Rawlinson Road Homeowners Assn., Inc. v. Jackson, 395 S.C. 25, 31, 716 S.E.2d 337, 340 (Ct. App. 2011). (While fines were involved in that case, apparently the issue of fines being a governmental function that cannot be usurped by a homeowners' association was not. Rawlinson Road, contrary to the reasoning of the court's order, does not provide authority to support the court's answer to a question the Rawlinson Road decision did not address. Also, the Seabrook Island Property Owners Assn. v. Berger case cited by the court similarly did not address the question of whether the law permits a homeowners' association to exercise the sovereign power to fine. 365 S.C. 234, 239, 616 S.E.2d 431, 434 (Ct. App. 2005).)

If there were a common-law basis for homeowners' associations fining people, it would have to be based on an authorization in the governing covenants to do so. There is no such authorization here.

EVEN IF THIS HOA COULD FINE PEOPLE, THOSE FINES WOULD NOT BE LIENS

The only statutory lien in favor of homeowners' associations under South Carolina law is for unpaid assessments for common expenses in a regime governed by the Horizontal Property Act, which the court found and the Defendant concedes is not at issue here. S.C. Code Ann. § 27-31-210. The covenants at issue in this case similarly provide for a lien only for unpaid assessments for common expenses. Nowhere is there any basis for the Defendant to have ever contended that the unpaid fines at issue here constituted a lien of any kind.

THE RESTRICTION AT ISSUE IS VOID AS A RESTRAINT ON ALIENATION

"Under South Carolina common law, any unreasonable limitation upon the power of alienation is against public policy and must be construed as having no force and effect." Wise v. Poston, 281 S.C. 574, 579, 316 S.E.2d 412, 415 (Ct. App. 1984). An absolute prohibition on for sale signs absent the permission of the Defendant's board – which may be withheld for any reason, even an arbitrary one – is an "unreasonable limitation upon the power of alienation" and is, thus, void. Id. The court now adopts one other state's reasoning, in the absence of South Carolina authority on point, to summarily dispense with this point. That reasoning is wrong, and the Plaintiff points out that it was employed by the same court that rejected out of hand what appears to be universal agreement by the judiciary of those states in our country that have addressed the fining issue.

THE BUSINESS JUDGMENT RULE DEFENSE FAILS AS A MATTER OF LAW

The business judgment rule defense fails because, contrary to the court's reasoning, that rule protects individual directors who have made errors in taking entrepreneurial risks on behalf of the corporation; further, it does not protect a corporation defendant from liability for actions that are outside the law. See Kiriakides v. Atlas Food Systems & Servs., Inc. 343 S.C. 587, 606 n. 31, 541 S.E.2d 257, 268 n. 32 (2001); Baumann v. Long Cove Club Owners Assn., Inc., 380 S.C. 131, 138, 668 S.E.2d 420, 424 (Ct. App. 2008); Goddard v. Fairways Dev. Gen. P'shp., 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993); Dockside Assn., Inc. v. Detyens, 291 S.C. 214, 216-17, 352 S.E.2d 714, 716 (Ct. App. 1987). A corporation cannot exercise powers that are outside the scope of what the law authorizes; such acts are *ultra vires*, which makes the business judgment rule inapplicable in any event. Baumann, 380 S.C. at 138; Goddard, 310 S.C. at 414; Dockside Assn., 291 S.C. at 216-17. As discussed above, a nonprofit corporation like the

Defendant has statutory authorization to exercise "the same powers *as an individual*" – not a governmental entity – "to do all things necessary or convenient to carry out its affairs[.]" S.C. Code Ann. § 33-31-302 (emphasis added). To fine is a power of a sovereign government, not of any individual. Purporting to usurp that power is beyond the protection of the business judgment rule. That rule is simply inapplicable.

In addition, since the Plaintiff's counsel pointed out to the directors on the Defendant's board several reasons (including many at issue in this case) why it had no power to fine, those directors were not acting in good faith, in any event.

SLANDER OF TITLE

"Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title." Huff v. Jennings, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995). There is no reason to think it would not be actionable here. Further, in South Carolina, "every violation of a legal right imports damage and authorizes the maintenance of an action and recovery of at least nominal damages, regardless of whether any actual damage has been sustained." Stevens v. Allen, 342 S.C. 47, 53 n. 5, 536 S.E.2d 663, 665, n. 5 (2000); accord Grooms v. Med. Soc'y of S.C., 298 S.C. 399, 380 S.E.2d 855 (Ct. App. 1989).

UNFAIR TRADE PRACTICES

The court reasoned that the Plaintiff's unfair trade practices claim cannot lie because the Defendant is not engaged in trade or commerce and its actions do not impact the public interest.

An action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, lies where there is a violation of the Act (i.e., an unfair or deceptive act in trade or commerce that impacts the public interest) that proximately causes damages to the plaintiff. See, e.g., Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 417, 458 S.E.2d 431

(Ct. App. 1995). "'Trade' and 'commerce' shall include the . . . distribution of any services and any property, tangible or intangible, . . . and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b). Trade and commerce are interpreted broadly for purposes of the UTPA. The text of S.C. Code Ann. § 39-5-10(b) states that:

> "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

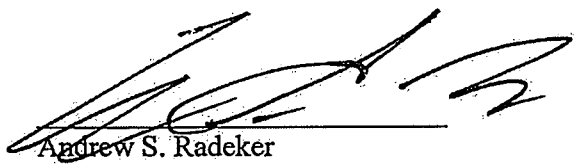
Our Court of Appeals has held that "[t]he statute's use of the words 'shall include' clearly suggests the legislature did not intend to limit 'trade' and 'commerce' to only the listed transactions." Baker v. Chavis, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991). "[T]he UTPA 'should be given a liberal construction.'" McTeer v. Provident Life and Accident Ins., 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting Connolly v. People's Life Ins. Co., 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988)).

The Defendant provides the services of a homeowners' association: maintenance of common elements, for example. That is "trade" or "commerce" for these purposes. Further, its actions at issue here impact the public interest: they are capable of repetition, as they are enshrined in the Defendant's by-laws as a policy applicable to all association members, and it seems plain that the purported usurpation of the government's power to fine impacts the public interest.

THIS COURT HAS TAKEN ON THE ROLE OF THE LEGISLATURE

Whether the law *ought* to allow homeowners' associations to fine people is not a question for this court or any court; instead, it is a question for the South Carolina General Assembly. Our legislature has not empowered homeowners' associations to fine people by delegating that state power to them. Unless and until that happens, they cannot exercise that exclusively governmental power.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
June 19, 2014

Drew Radeker

From: Griffith, Eugene Law Clerk (Gregory Close) <egriffithlc@sccourts.org>
Sent: Monday, June 09, 2014 7:59 PM
To: Ely Grote
Cc: Drew Radeker; 'Charles Krawczyk'
Subject: RE: S. Corely Brown v. Spring Valley Homeowners

Mr. Grote,

Thank you for your email. It is my understanding that an order granting the Defendant's motion for summary judgment was clocked on 4/3/14. Please let me know if you have any questions or concerns.

Best Regards,

Greg Close

-----Original Message-----
From: Ely Grote [mailto:eog@brownandbrehmer.com]
Sent: Monday, June 09, 2014 5:34 PM
To: Griffith, Eugene Law Clerk (Gregory Close)
Cc: 'drew@harrisonfirm.com'; 'Charles Krawczyk'
Subject: RE: S. Corely Brown v. Spring Valley Homeowners

Mr. Close:

I just wanted to follow up with you concerning the status of the proposed order granting summary judgment to the defendant that was submitted in January. If you could give me a quick update, it would be greatly appreciated. Thanks.

Ely O. Grote
Attorney at Law
Brown & Brehmer
P.O. Box 7966
Columbia, SC 29202
Phone: (803) 771-6600
Fax: (803) 252-1620

-----Original Message-----
From: Griffith, Eugene Law Clerk (Gregory Close) [mailto:egriffithlc@sccourts.org]
Sent: Wednesday, March 05, 2014 9:18 AM
To: Ely Grote
Subject: Re: S. Corely Brown v. Spring Valley Homeowners

Judge Griffith is reviewing the order. I will let you know when he makes a decision.

Sent from my iPhone

On Mar 5, 2014, at 9:14 AM, "Ely Grote" <eog@brownandbrehmer.com<mailto:eog@brownandbrehmer.com>> wrote:

Mr. Close:

Exh. A

I just wanted to check in with you concerning the status of the proposed order that was submitted in this matter on January 13th. I would greatly appreciate any information that you could provide. Thanks.

Ely O. Grote
Attorney at Law
Brown & Brehmer
P.O. Box 7966
Columbia, SC 29202
Phone: (803) 771-6600
Fax: (803) 252-1620

From: Ely Grote
Sent: Tuesday, February 11, 2014 6:24 PM
To: 'Griffith, Eugene Law Clerk (Gregory Close)'
Cc: 'drew@harrisonfirm.com<mailto:drew@harrisonfirm.com>'; 'Charles Krawczyk'
Subject: RE: S. Corely Brown v. Spring Valley Homeowners

Mr. Close:

I just wanted to follow up with you concerning the status of the proposed order that was submitted in this matter on Jan. 13. I appreciate your assistance.

Ely O. Grote
Attorney at Law
Brown & Brehmer
P.O. Box 7966
Columbia, SC 29202
Phone: (803) 771-6600
Fax: (803) 252-1620

From: Ely Grote
Sent: Monday, January 13, 2014 5:50 PM
To: 'Griffith, Eugene Law Clerk (Gregory Close)'
Cc: drew@harrisonfirm.com<mailto:drew@harrisonfirm.com>; 'Charles Krawczyk'
Subject: RE: S. Corely Brown v. Spring Valley Homeowners

Mr. Close:

Pursuant to your request, attached, please find a proposed order in the above referenced matter. Should you have any questions or concerns, please do not hesitate to contact me.

Ely O. Grote
Attorney at Law
Brown & Brehmer
P.O. Box 7966
Columbia, SC 29202
Phone: (803) 771-6600
Fax: (803) 252-1620

From: Griffith, Eugene Law Clerk (Gregory Close) [mailto:egriffithlc@sccourts.org]
Sent: Monday, December 30, 2013 2:19 PM

To: Ely Grote
Cc: drew@harrisonfirm.com<mailto:drew@harrisonfirm.com>
Subject: S. Corely Brown v. Spring Valley Homeowners

Mr Grote,

Judge Griffith has made a decision in the case mentioned above. Will you prepare a proposed order that affirms the homeowners fine? Thank you for your time.

Best Regards,

Greg Close

Drew Radeker

From:	Drew Radeker
Sent:	Thursday, November 21, 2013 11:33 AM
To:	egriffithj@sccourts.org; egriffithlc@sccourts.org; bgriffithj@sccourts.org; bgriffithlc@sccourts.org
Cc:	Charles Krawczyk; Ely Grote; ely.grote@brownandbrehmer.com; Taylor Smith
Subject:	RE: Coley Brown v. Spring Valley Homeowners Association (2012-CP-40-6974)
Attachments:	P236-P237.pdf; Huff v. Jennings.rtf; Solley v. Navy Fed. Credit Union.rtf

Judge Griffith:

I just realized that we may have been using incorrect email addresses for you and your law clerk on the emails below, in which case I provide them to you by way of this message.

Thank you.

Drew Radeker

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Facsimile: (803) 779-6700

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From: Drew Radeker
Sent: Thursday, November 21, 2013 10:09 AM
To: egriffithj@sccourts.org; egriffithlc@sccourts.org
Cc: Charles Krawczyk; Ely Grote; ely.grote@brownandbrehmer.com
Subject: RE: Coley Brown v. Spring Valley Homeowners Association (2012-CP-40-6974)

Judge Griffith:

Please allow this message to address a few things raised at the hearing and in the Defendant's reply memorandum.

At the hearing, the Defendants contended that they are entitled to summary judgment on the slander of title claim on the theory that there is no evidence of the Plaintiff having been damaged. This issue was not raised in the Defendant's written motion and thus may not be properly before the Court in any event, see Rule 7(b), SCRCP, but that argument is incorrect, for at least two reasons. 1) The Plaintiff does have damages. Attached

Exh. B

to this message are copies of two cases, Huff v. Jennings and Solley v. Navy Fed. Credit Union that discuss slander of title. Solley discusses in detail what is referenced in Huff: litigation expenses, including attorney's fees, can be damages in a slander of title case. Also attached is a copy of the plaintiff's fee agreement with our firm, which shows that he has incurred attorney's fees (naturally, he also incurred the $150 filing fee and a couple of $25 motion fees, as well). The fee agreement may be properly put before the Court, as Rule 56 requires that evidentiary material in opposition to summary judgment must be *served* two days in advance of the motion's hearing, and this was served on the Defendant in July. 2) Even without considering the fee agreement, the Court could not grant summary judgment on the slander of title claim on the ground that there are no damages for a reason of established law: in South Carolina, "every violation of a legal right imports damage and authorizes the maintenance of an action and recovery of at least nominal damages, regardless of whether any actual damage has been sustained." Stevens v. Allen, 342 S.C. 47, 53 n. 5, 536 S.E.2d 663, 665, n. 5 (2000); accord Grooms v. Med. Soc'y of S.C., 298 S.C. 399, 380 S.E.2d 855 (Ct. App. 1989).

The Plaintiff is unsure why the Defendant would go to such great lengths to underscore that the covenantal restrictions at issue are not promulgated pursuant to the Horizontal Property Act. To do so only points out that there is absolutely no statute from which the Defendant could even argue any interpretation at all, even a plainly incorrect one, that our legislature has empowered homeowners' associations to levy fines. The Defendant simply points out to the Court yet again that there exists no legal authority for the Defendant to impose fines. At common law, from which the Defendant purports its power derives, the power to fine is vested in the sovereign; there is no common law authority for a homeowners' association (or any other private entity) to levy a fine.

The Rawlinson Road and Seabrook Island arguments the Defendant makes are not relevant to this case. In neither of those cases was the association's power to impose fines at issue.

If the Court replaces the word "fine" with the word "imprison," this illustrates the fallacy of the Defendant's position. While imprisonment is often more harsh than the imposition of a fine, there is no difference between these punishments that is material to the outcome of this case. They are both punishments that the sovereign is exclusively empowered to impose. If the Defendant wants the law to be otherwise, it should lobby its representatives in the General Assembly.

Thank you. Of course, if you or your staff have any questions or concerns, please do not hesitate to contact me.

Drew Radeker

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ATTORNEYS AT LAW
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Personal Injury • Consumer Law • Mediation/Arbitration • False Arrest • Commercial Litigation

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From: Ely Grote <EOG@brownandbrehmer.com>
Sent: Wednesday, November 20, 2013 5:27 PM
To: egriffithj@sccourts.org; egriffithlc@sccourts.org
Cc: Drew Radeker; Charles Krawczyk
Subject: Coley Brown v. Spring Valley Homeowners Association (2012-CP-40-6974)

Judge Griffith:

As you are aware, you heard argument on the cross motions for summary judgment in this matter on 11/13. At the time of the hearing, the Defendant had not yet had a meaningful opportunity to review the plaintiff's memorandum of law and requested an opportunity to reply to any issues raised in plaintiff's memorandum. Consequently, the Defendant in this matter respectfully submits the attached reply memorandum to address matters raised in plaintiff's memorandum and to correct an error in Defendant's initial memorandum. The Defendant respectfully requests your consideration of this memorandum as well. By copy of this email, I am notifying all counsel of my correspondence with the court.

Ely O. Grote
Attorney at Law
Brown & Brehmer
P.O. Box 7966
Columbia, SC 29202
Phone: (803) 771-6600
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James C. Harrison, Jr.*
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F. Casey D. Cornwell
* Mediator/Arbitrator

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Columbia, SC 29250

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October 5, 2012

VIA HAND DELIVERY

Mr. S. Coley Brown
6436 Westshore Dr.
Columbia, SC 29206

Re: Bringing suit against Spring Valley Homeowners Association, Inc. regarding notice of lien filed September 13, 2012, and whether the Association can fine its members

Dear Coley:

Thank you for contacting us about the possibility of this firm's representing you in the above-referenced matter. This firm is agreeable to representing you in this matter upon the terms set out in this letter.

Our fee in this matter will be a flat fee, to be paid at the time we commence representation of you, in the amount of $2,500.00. This fee will be treated as immediately earned by us at the time we commence representation of you in this matter and will not be held in our trust account. If we do not provide the agreed-upon legal services per this agreement, you may be entitled to a refund of all or a portion of the flat fee. You agree that if an amount greater than the flat fee amount is awarded to you by the court as attorneys' fees, the amount of that attorneys' fee award in excess of the flat fee will be part of our fee, and we will be entitled to collect it from any amount paid by any defendant in this case or otherwise recovered on your behalf.

This fee covers only our representation of you in this lawsuit at the state circuit court level and does not cover any representation of you in any other actions or any appellate proceedings that result from this matter; if you wish to engage us to represent you in any other such matters, we would need to come to a separate agreement for that representation.

All costs will be borne by you. Costs include, but are not limited to, copies, long distance telephone calls, facsimile charges, travel, court fees, and title work. We will expect prompt payment on our statements for costs, but in no event later than thirty (30) days after billing, with the balance due at the end of our representation. Nonpayment of any billing for costs will be grounds for our withdrawal from further work on this matter. We may advance costs in this matter if we choose to do so; however, we are not obligated to advance any costs. Any costs or attorneys' fees unpaid by you at the time any recovery you obtain, if any, is disbursed will be deducted from your share of the recovery.

You have specifically requested that we represent you for the purpose of the above-referenced matter. If you retain us to do so, we will endeavor to assist you in a professional manner and to the best of our abilities; however, we cannot guarantee any results. We will suggest options to you, but, ultimately, you are responsible for choosing the manner in which we proceed. You do, however, agree that we have the discretionary authority to make all scheduling and procedural decisions, including decisions of whether to grant extensions for compliance with deadlines, without first consulting you, and you agree that you will be bound by our decisions as to such matters.

You agree that the amount in controversy in any suit we bring pursuant to this agreement is less than $10,000.00, and you authorize us to stipulate that fact on your behalf. You understand that you will be bound by such a stipulation.

You will have the right to terminate our representation at any time. We will have the same right to terminate our representation, subject to our obligation to give you reasonable notice to arrange alternate representation and, where required, to obtain permission of the court before which this lawsuit is pending. We will require your complete cooperation, communication, and assistance in this matter, and your failure to provide us with the same will constitute grounds for our withdrawal of representation of you in this matter.

Please review this letter agreement and, if it meets with your approval, sign, date, and return it to our office to indicate your understanding of and agreement to the terms of representation. We can take no action to represent you in this matter until this agreement is signed and the $2,500.00 flat fee has been paid to us.

We look forward to working with you in this matter.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/

I AGREE TO THE TERMS OF REPRESENTATION AS OUTLINED ABOVE.

S. Coley Brown

Date: 10/5/2012

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2012-CP-40-6974
	)	
	)	
S. COLEY BROWN,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SPRING VALLEY HOMEOWNERS ASSOCIATION,	)	
	)	
DEFENDANT,	)	

November 13, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE EUGENE GRIFFITH, JUDGE.

APPEARANCES:

ANDREW RADEKER, ESQ.
Attorney for the Plaintiff

ELY GROTE, ESQ.
CHARLES KRAWCZYK, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

THE COURT: All right. It's your motion. I'll hear it.

MR. RADEKER: I believe we have got cross-motions.

THE COURT: Oh, you filed one, too?

MR. GROTE: Your Honor, the plaintiff had filed a motion for summary judgment first. So their motion got set on this roster. We agreed that since their cross-motions for summary judgment, saying all the same issues we would argue today. We sent notice and ask that the Court hear them all.

THE COURT: All right. The case I heard twice or two cases prior had already been continued today and everybody was here, so I don't get everything.

MR. RADEKER: And Your Honor --

THE COURT: Since you're here, I'll hear both the motions.

MR. RADEKER: Thank you, Your Honor. We certainly don't mind both the motions being heard today.

Mostly, they concern what may be and we think is going to be a dispositive legal issue in this case. This is not a case about failure to pay assessments for common expenses.

Mr. Brown is current on notice. It's a case about whether a homeowners association in the absence of any statutory authority or authority in the restrictive

covenants that are part of the deeds at issue that says they can fine people can fine people.

Here, you know, Mr. Brown placed a for sale sign in his yard, and they contend that's in violation of the covenants. There's some support for that, but what they did about it was to assess purported fines against him.

Now, to fine is a power of the sovereign government. That's not just me saying that. In the memorandum that we cited, the United States Supreme Court says that. The South Carolina Supreme Court has said that in the past.

That power cannot be exercised by a private entity absent a delegation of that power by the state. This will be done by statute. I can't imagine how it will be done some other way.

Some states have done this and delegated to a homeowners association the power to fine their members. South Carolina is not one of then. We don't have a statute that does this.

The defendants rely on their memorandum on statutes from the general nonprofit corporation statute, but Your Honor, those don't avail the defense because they state two things: That a nonprofit corporation can exercise powers that are not inconsistent with law and to usurp an exclusive power of the sovereign is inconsistent with law.

They say that a nonprofit corporation can exercise

any powers that an individual might exercise. An individual cannot fine people. Drew Radeker cannot fine people. Because Drew Radeker cannot fine people, neither can Spring Valley Homeowners Association fine people.

So as a matter of law, they don't have the power to do this. Further, they went and recorded a notice of lien against Mr. Brown. Now, there's nowhere in any statutory law or any cases that have recognized some of the purported power of the fine here in South Carolina law and any authority to do that.

It's nowhere in the covenants that says you can do that, and further, what the covenants say is that a lien arises for failure to pay the common assessments or common expenses, periodic expenses assessments, not for failure to pay any fines, which fines are not mentioned in the covenants in any way.

Now, while the defendant expressly calls these monetary sanctions fines -- in their bylaws, they call them fines. Even if the court were to determine them to be contractual penalties, they still wouldn't be enforceable. Contractual penalties are normally not enforceable.

When a Court examines whether a purported stipulation of liquidated damages in a contract is, in fact, an unenforceable penalty, one of the things it looks to is it

tied to an estimation, a projection of what the actual damages lost would be as a result of the breach of the contract, and if they're expressly designed to punish, then they're a penalty. That's what our case law has said and they're unenforceable.

Now, here there has been no evidence that the association has suffered any damages as a result of Mr. Brown placing the sign in the yard, and it's difficult to imagine how it could.

Furthermore, the documents designate the fines as fines. They are punitive measures. That is what they are supposed to be per the amended bylaws of the defendant, and so even if they were a contractual penalty by design, they still fail as an unenforceable one. Also, Mr. Brown never contracted for this. In the covenants that are at issue, there is nothing that says they can fine anybody.

Now, even if as a matter of theory under South Carolina law in the right circumstances, a homeowners association could fine people, this homeowners association could not precisely because its covenants do not provide for any power to fine people.

There's a case cited in our memorandum, Rawlinson Road Homeowners Association vs. Jackson. That case said -- in a case that had to do with fines, this issue about it being solely a government power apparently is not

an issue in that case, but it did say that the homeowners association cannot expand its authority through rules and regulations beyond what the declaration of covenants at issue allow. That's exactly what Spring Valley Homeowners Association has purported to do here.

So even if as a matter of theory, homeowners associations could fine people in this state, this one could not because the covenants don't provide for it. Also -- and this is particularly relevant to our slander of title claim, Your Honor, even if this homeowners association could fine people, the fines wouldn't be liens because the only liens that are authorized are for unpaid periodic assessments for common expenses.

So what they have done is gone and filed something calling it a notice of lien for homeowners' fees is what they call it, and then it recorded it saying, "We have got a lien against you for $500 here," and they don't.

There's no authority to indicate that they possibly could, even under the Horizontal Property Act that which -- nothing to indicate that this homeowners association was created under that act, but even if it were, the only lien it authorizes is also for unpaid assessments for common expenses and not for any fines.

Their defenses fail as a matter of law. They assert a statute of limitations defense, but the events that give

rise to this claim occurred in 2011 and 2012. This action was commenced in 2012.

They point to the fact that Mr. Brown voiced his opposition to the idea that the covenants at issue prohibit for sale signs as early as at least 2008, but at that point, there's no right justiciable controversy before the court because at that point, the homeowners association is not seeking to take any action against Mr. Brown for doing that because he hasn't done it. So there's no right of controversy here.

Right of controversy didn't arise until they purported to impose fines against him, and then as to the slander of title claim when they went and recorded the Notice of Lien in September of 2012, same thing as to their laches argument.

Mr. Brown hasn't sat on his rights with respect to these events. These events didn't occur until 2011 and 2012. They posit a business judgment rule defense. It's inapplicable for two major reasons: One, as we discussed, finding people is not something that the law authorizes homeowners associations to do.

The business judgment rule does not protect with regard to ultra virous acts which include acts that are prohibited by law. Also, the business judgment rule shields individual directors of a corporation from

individual liability when they've taken some entrepreneurial risk that hasn't worked out.

Here the directors, the board, are not defendants in the case. It's the association who went and purported to levy fines and recorded the Notice of Lien that is the defendant in this case. So for those two reasons, business judgment rule would be totally inapplicable.

Basically, the defendants spend their memorandum arguing about how homeowners associations ought to be able to fine people, but that's a question for the General Assembly, not for this court or any court.

The law in this state is that they're not. So if they want to change that law, they're not talking in the right forum. They need to go take that up with someone who can lobby on their behalf or directly with a legislator.

What's at issue is not the things that they talked about at the NCAA, other things like hotel fines and whatever. Those would be issues in cases brought about those things. None of that stuff is before the court.

There's no record made concerning any special provisions that are accommodated for those entities. What's at issue here is the attempted usurpation of a solely government power by a non-government entity. For that reason, they can't do this.

Furthermore, they're -- as noted in the memorandum, their prohibition against for sale signs which can be arbitrarily -- permission to put them up can be arbitrarily denied for any reason is a restraint on alienation. So any attempt to enforce any consequences that would flow from that would be void in any of that, but that's really an independent issue. It doesn't have anything to do with the rest.

Thank you.

THE COURT: Okay.

MR. GROTE: Your Honor, may it please the Court.

THE COURT: Yes, sir.

MR. GROTE: My name is Ely Grote. I represent the defendant which is Spring Valley Homeowners Association. To my left is Charlie Krawczyk. He also represents the Spring Valley Homeowners Association in connection with their claim to enforce this time.

We submitted a lengthy memorandum. Hopefully you had an opportunity to review it or will have an opportunity to review it. We don't want to beat a dead horse and hit every point, but there are a few things that I do want to point out in opposition to the arguments that Mr. Radeker made.

First off, this is not a case where Mr. Brown sought permission, and he was arbitrarily denied permission. He

knew this restriction existed when he put it up.

I provided meeting minutes where he -- once they raised the issue about whether he had a hardship, he was then granted a hardship hearing. He had already taken the for sale sign down by the time of the hardship hearing, but this isn't a situation where he was arbitrarily denied the right to put up any for sale sign. He admitted at the hearing he knew he couldn't do it, but he did it anyway.

This is a situation where Mr. Brown just doesn't think the rules apply to him. He can just go ahead and do whatever he wants, and there should be no penalty.

So with regard to the authority to do what was done, we provided you with a copy of the deed. That's an exhibit to our memorandum. According to that deed, Mr. Brown agreed to abide by all the rules and bylaws of the business corporation.

He also agreed that the grantor, which is the developer and those developer's rights have then been transferred to the homeowners association, that they had the right to jointly and severely -- excuse me, they had a right, jointly or severally, of abatement and to enforce compliance by injunction or any other appropriate legal remedy to enforce the violations of the restrictions and the bylaws.

They're claiming there's no authority to file a lien.

That's any other legal remedy. He agreed that they had legal remedies -- any legal remedy to enforce violations against him.

THE COURT: He made the distinction that the fine of $500 was classified or characterized as a fine, and the fine can't become a lien because it's not an assessment.

MR. GROTE: I understand that argument but...

THE COURT: How do you see the money? What -- how do you characterize the $500?

MR. GROTE: I'm sorry?

THE COURT: How do you characterize the $500 request for payment from Mr. Brown, property owner? What do you call it?

MR. KRAWCZYK: May I?

THE COURT: Yes.

MR. KRAWCZYK: Charlie Krawczyk. I think there's no -- the bylaws speak for themselves. I mean, I don't think there's any argument that they are called a fine.

THE COURT: Okay.

MR. KRAWCZYK: And they are associated as a fine, but the fact that you allow for a lien for assessments and you have a contractual statement that says you use -- you can enforce the bylaws and the covenants by any legal means having the word lien in for assessment does not then disallow the ability of a lien for any other monetary

issue.

So I mean, there's very specific language within the covenants that say we can use any other legal method by which to enforce the covenants and the bylaws so --

THE COURT: His argument is it's not legal for your group to impose a fine.

MR. KRAWCZYK: And that -- that's a completely different issue from what's in the bylaws.

THE COURT: Right.

MR. KRAWCZYK: I think what -- he is arguing that -- I think first and foremost, Your Honor, it's important to understand that Mr. Radeker in his letters to the homeowners association, has always pointed out -- his issue has always been that this is not constitutionally allowed, okay, that nobody other than the government --

THE COURT: Can fine him.

MR. KRAWCZYK: -- can fine him for any reason, Okay. So when he brings up the issue of the NCAA, that doesn't apply, of course, it applies. He is talking about a constitutional prohibition from filing.

This is patently unreasonable to bring that before the Court. Secondly, there is no law that says it's illegal to do for the homeowners association.

In fact, it's a rather common methodology for not only homeowners associations but all kinds of

organizations in that. I'll use -- I'm the president of the adult soccer league here in town, Your Honor.

When somebody gets a red card in my league, they're don't get to play unless they pay the fine. We call it a fine, and that's a contractual obligation between the two.

So again, I don't mean to step in here, but we start talking about the issue between the fine and assessments, it's just cutting hairs on what his true argument is, which is you don't have legal authority under the constitution to do it so...

THE COURT: All right.

MR. GROTE: Your Honor, as far as notice, Mr. Brown, like I said, he had notice of these provisions. He had notice a long time, and he was subject to these provisions. He didn't do anything about it. We think that would raise -- that would raise the statute of limitations claim, equitable estoppel, waiver, and also the fact of laches.

You know, the homeowners association has gone on for years since 2004 with this fine structure. They issued fines. Homeowners associations across the state have issued fines. Having to sit back and then challenge it later on, it costs them --

THE COURT: When was his fine imposed?

MR. GROTE: His fine was imposed in 2011, I believe.

THE COURT: So then you ain't touched him until 2011. It seems like that's one of his -- that's the triggering event. You hadn't bitten him yet. Once you bite him with the money, then that's when he raised his hand.

MR. GROTE: Your Honor, he knew about it, and he had the opportunity to challenge it. There's procedures you have to go through to amend the bylaws. He had a right to speak up and challenge it, and he sat back on that right.

THE COURT: Why is he going to spend money for something that's not affecting him yet? I mean, he has no reason for that, does he?

MR. GROTE: Well, he has knowledge that it could affect him.

THE COURT: I'm not buying that. Skip on to something else.

MR. KRAWCZYK: Well, we just --

THE COURT: That's weak.

MR. KRAWCZYK: One other issue. Just for clarity, understand, this is relief being sought as a declaratory judgment, not as to the specific fine that he necessarily has imposed. This is the idea that the homeowners association in and of itself cannot do two things.

THE COURT: All right. Let's --

MR. KRAWCZYK: Why?

THE COURT: Why didn't y'all bring an injunction

against him? Because you chose not to.

MR. KRAWCZYK: Well, Your Honor, we didn't bring an injunction against him.

THE COURT: Well, it cost money.

MR. KRAWCZYK: That's number one. Number two, he had -- by agreement, he had 15 days in which to then take his sign down, but then he sought -- he sought within the bylaws and the covenants to have a hardship hearing. He was granted that in the meantime to give him that opportunity before going off and filing an injunction.

It was only after he pulled his house off the market, then the hearing took place. What good would an injunction do at that point in enforcing the bylaws and restrictions?

Honestly, that's what the plaintiff wants. He wants the ability to buck the system by putting up a for sale sign until an injunction is filed.

THE COURT: Right.

MR. KRAWCZYK: Then the association has to expend attorneys fees to get an injunction, come before the court to seek extraordinary remedy which is already outlined in his deed restriction.

So without the ability to have some methodology to enforce these outside of injunction, there's not going to be a restriction in that deed that's going to be

enforceable with any reasonable certainty.

People will just sit back and wait, violate them to the extent that they feel it meets their own needs until the association files an injunction, and then they will take it down and then it appoints me. So the -- here, the association has its fine structure in place which is also -- to go to your point, Your Honor, within -- you know, what does it cost to file an injunction?

THE COURT: I know. Okay.

MR. KRAWCZYK: A lot of money so --

THE COURT: What does it cost to say, "You know what. I'm thinking about putting a for sale sign, and I'm going to tell you right now, I think it's unconstitutional, and y'all cannot impose me a fine. So I'm going to bring an injunction for you to even enforce that," that's crazy. Nobody will do that, and that's what you're saying under this laches and statute of limitations argument. I'm not buying that one, so get to a better one.

MR. KRAWCZYK: We understand, Your Honor.

MR. GROTE: Your Honor, as to the actual authority, we cited you cases from other jurisdictions that have allowed the fine.

The corner case which is cited in our memorandum in the Crouch vs. Bentree, those are cases that are clearly cited, homeowners associations can't fine people. There

is case law from other jurisdictions that says that.

THE COURT: I've read y'all's briefs very quickly, but I'm going to read them again more thoroughly. So I had -- was familiar with that, the facts of this case and the last one. I had some time yesterday, but y'all handed me your briefs earlier. I appreciate that a lot.

MR. GROTE: Further, our law says that when covenants and restrictions are clear and unambiguous is to enforce them. These -- in this case, they're clear and unambiguous. This is something that he agreed to do. I mean, their argument is only the government can fine somebody.

Well, where in the world would the government get the authority to fine someone for a violation of a homeowners association covenant? That's really outside the scope of a governmental ability to fine.

They have no authority to step in and tell the homeowners association, the homeowners, you're violating covenants or not. That's not even the power they have authority to delegate. This is something that's contractually agreed. It's a private matter.

The other issue is that there is statutory authority under the nonprofit corporation that says that a homeowners association as a nonprofit corporation has the authority to do anything in furtherance of the Corporate

Act if it is not in violation of the law.

There is no law in South Carolina that says you can't fine somebody. They're acting within the scope of the authority that's been granted to them.

Additionally, if it were -- I guess if Mr. Brown gets his wish, you strike -- struck down the ability to fine, what's going to happen is the homeowners association is going to have to bring an action to enjoin, an injunction action to prevent people from doing any type of violation of the restrictive covenants.

What that means is that the homeowners association is going to have to incur legal fees every time there is a violation. He has got a $500 fine, but the attorneys' fees filing an injunction for every violation are going to far exceed that.

So he would be a lot worse off if they had to file an injunction against him rather than the fine. Not only that, the homeowners association has spoken on these. It was in the interest of the community because it passed.

If it didn't pass, I mean, then the homeowners association members had spoken, said that's not what they want. The fact is if the homeowners association has to file an injunction every time, of course, they're going to seek attorneys' fees, but even if attorneys' fees aren't awarded, the homeowners association is funded through the

homeowners.

So the homeowners are the ones who are then going to have to pay the legal fees for every time the homeowners association has to enforce it. It's going to cost the homeowners association -- excuse me, the homeowners a lot more money in the long run to do it. To the extent that we're arguing about public policy, that's bad public policy right there.

THE COURT: All right.

MR. GROTE: And in our memorandum we brought up several instances. If you say the power to fine is solely governmental. No entity or no corporation and its members can enter into any type of agreement to be bound or regulated such as fines, I mean that changes the way we do business across the country.

Look at any professional sports association. Look at the NFL. They issue fines to players and teams all the time. They are not a governmental entity, but these sports teams, they have agreed to be bound by these rules because it is in the benefit to have an organization that exercises some type of control, some type of governance over this.

Otherwise, you know, the NFL would not be worth what it is today. Look at the MLB. Look at all the steroid issues going on with the fines, potential fines against

A-Rod, all of that -- those are nongovernmental entities issuing fines and sanctions.

Look what happened to Lance Armstrong. That was a non-governmental entity fining him and stripping him of all of these things. NCAA, Penn State. You don't have to look far. They issued millions of dollars in fines against Penn State there.

NCAA is not a governmental entity. Schools agree to be bound by their rules because it benefits the whole group, and they agree to be bound by these fines and they accepted the fines.

That's -- so what he is saying is essentially all of that, all those fines are nonenforceable. You know, if the Court can't fine an employee for violations of its handbook, you know, we lost power and authority to do anything to enforce any rules, it creates a huge problem.

That's -- if you rule -- what he's saying, nobody can agree to be bound by a government -- or by a nongovernmental entity to be fined, then we've -- we've destroyed the power to do all of those things I just said. Our sports teams may not exist anymore.

THE COURT: All right.

MR. GROTE: Your Honor, I would just note that we got plaintiff's memorandum like 10:30 this morning. I haven't had an opportunity to actually review everything in there.

THE COURT: All right.

MR. GROTE: I tried to -- we reserve the opportunity to review this and --

THE COURT: Sure.

MR. GROTE: -- submit our reply, if necessary.

THE COURT: I'm going to review them both. I read some of this yesterday.

MR. GROTE: I would note, however, that in my brief review of the plaintiff's memorandum, several of the things they cite relate to the Horizontal Property Regime Act. This is not a case where the Horizontal Property Regime Act applies.

The Horizontal Property Regime Act applies to condominium associations. We have to be specifically formed under that act, and that is a creature of statute. Condominium associations are a creature of statute versus planned development community association situations which they are not a creature of the statute. They are created by the deed, and then you have a nonprofit corporation that governs them.

So several of these cases that they cite in there deal with Horizontal Property Regime law, and that is a completely different animal than what we're dealing with here.

To the extent that they're citing authority to the

extent that you have to have statutory authority to fine, some of these cases deal with cases created under the condominium act where they are a statutory creature. The authority is derived strictly from statute. Whereas, here is a nonprofit corporation. The authority is not specifically derived from the statute.

With regard to a couple of cases that they cited, I do want to note a couple of things. They cited this Gillman case that the Supreme Court of Virginia case makes some broad -- for some broad proposition that only a governmental entity can fine.

If you look at that case, there is no authority cited for that proposition. They just throw that out there. They don't cite any constitutional provision. They don't cite any law. They don't cite anything. It just comes outs of nowhere.

The other issue is that, you know, plaintiff has made this argument that you can't -- it's only a governmental entity that can fine, but not once have they cited any provision of the contract or the Constitution of the State of South Carolina or the Constitution of the United States for any support. They just make this broad argument. It's unconstitutional outside of any provision or any source for that.

The other case that they cite in support of their

proposition that you can't fine is this Vernon. I would also note that Gillman case that they cite, that deals with a condominium association. That deals with the Condominium Act that deals with the condominium association that was created by statute; whereas, this exact case doesn't apply anyway.

The other one they cite is a Vernon Manor Cooperative Apartments vs. Salatino. They cite that for the proposition that you can't issue fines unless there's statutory authority to do so.

In that case, I think that may be a misstatement because if you actually read that case, it goes on to cite that this is under a Cooperative Housing Corporation Act which we don't have here, but under that act, it didn't have a broad provision saying that they have the authority to enforce their covenants.

Specifically, they have -- their law says they have the right to fix procedures and liabilities in case of violations of the bylaws and the obligations of members, officers and directors. That's basically the same type of broad language that our Horizontal Property Corporation Act has, and in that case, they didn't actually strike down the fine as being in violation of the Constitution or being illegal.

They went on to say that the cooperative corporation

made by direct statutory sanctions and fixed liability for violations of the bylaw, IE fine someone. However, what they did is they start counting the fine as being unreasonable. They said, you know, if you're going to issue a fine, it has to be reasonable.

So that case doesn't say that you can't fine somebody. It says the fine has to be reasonable, and that actually includes -- allowed that fine in that case.

As far as the monetary damages, we cited several defenses to the monetary damages. If I could -- the restraint on the alienation, in our affidavit of Bess Lindler, she is the administrator, thousands of houses in this neighborhood have sold subject to this restriction.

This restriction has been there since the inception of this subdivision. Mr. Brown likely bought his house without seeing a for sale sign. It in no way prevents you from selling your house. You can list it with a realtor. You can get a DIY kit, get your own MLS listing. You could sell it via the newspaper, anything.

The fact that there -- you can't place a for sale sign in your house is not even a restraint on alienation let alone an unreasonable restraint. If you read the case law on unreasonable restraint on alienation, you know, they say that a life estate, although it's a restriction on alienation, it's not unreasonable.

So you can't have restrictions on alienation. They have to be unreasonable, and I cited you a case from another jurisdiction that specifically ruled on that issue that said no, this is not a refrain on alienation.

Also, they raised the issue about whether we waived our right to enforce these covenants and restrictions. The affidavit of Bess Lindler clearly addresses that.

They enforced every for sale sign that they have known about. They haven't actually knowingly acquiesced to any violations of that.

As far as monetary issues, we content that since the homeowners association had the right and authority to issue this fine, the monetary damages are moot. Not only that, to say that you ruled that the homeowners association can't fine somebody, this has been their policy since 2004.

They actively used this policy since 2004. It's been industry standard throughout the state. It's customary practice. You know, the homeowners association board members, you know, they're lay people. They have relied on customs in dealing over the years.

They relied on the fact the homeowners association have done it over the years. So they complied with their standard of care. They have also -- also sought legal advice before continuing to impose the fines.

They sought legal advice before they filed the deed restrictions, so as cited in the standard of care statute, they met their standard of care. They have acted reasonably. There is no basis for imposing any monetary damages, even if Your Honor were to rule that they don't ultimately have the ability or authority to fine because they were acting in good faith on years of standards and custom.

Not only that, our case law is clear that if a judge rules -- or where it creates a new liability, that type of judgment has to have restrictive application only. It cannot be retroactive.

In this case, there is no South Carolina law or authority specific that says the homeowners association cannot fine somebody. Therefore, if you were to say, "Sorry. Based on what I have reviewed, I just don't think the homeowners association can fine somebody," well, that's going to create some liability for the homeowners association that never existed before.

In fact, that retroactive application, every person who has ever been fined by a homeowners association all of the sudden has a cause of action against their homeowners association for being fined.

I think that's clear. The purpose of the rule where you create liability where there is none has to have

respective application only. So in this instance, since there is no law that says they couldn't do it, and if you were to rule otherwise, that would create new liability. So these monetary damages claims need to go anyway. This is really just a case about a legal issue.

Finally, as to the Unfair Trade Practice Act, that act does not apply in this case. I've cited you a couple of cases. The alleged unfair act has to be done within trade or commerce.

THE COURT: I agree with you on that one.

MR. GROTE: What's that?

THE COURT: I agree with you on that one.

MR. GROTE: Okay. I won't argue that one.

THE COURT: You don't have to. That's a stretch for him.

MR. GROTE: Right. I mean, just because -- to the extent I think he argued that the homeowners association may engage in trade and commerce sometimes, the case law is clear. You have to be engaged in trade or commerce at the time of the alleged act.

THE COURT: Don't talk me out of it.

MR. GROTE: For example, if you --

THE COURT: You know, don't talk me out of that one. I'm with you.

MR. GROTE: All right. Thank you, Your Honor. I'll

leave that one alone then.

THE COURT: You have a tenderloin steak argument over a hot dog in this case. I mean, that's pretty impressive.

MR. GROTE: Well, you know, part of the issue is, is that, you know, this is something which is going to affect everybody.

THE COURT: It's a capable issue.

MR. GROTE: What's that?

(Laughter.)

All right. Finally, moving on to the slander of title claims since we addressed the Unfair Trade Practices claim, again we have formed the authority that we believed allowed us to file the lien.

Additionally, this is something that is my understanding that's been in the industry, custom and practice to do that for this homeowners association and other homeowners associations.

The homeowners association was acting reasonably in accordance with known industry standard and practice and upon legal advice. Therefore, they have met their duty of care.

Additionally, there is no evidence that this defendant acted with malice, liens of any type -- a false statement. He has to prove some type of diminished value of his property because of this lien.

They can came forward with their competent evidence of any type of diminished value of the lien. The lien was only $500, but you know, that would not prevent someone from selling their property.

You know, to the extent that he argues this, take it as a protest, it's still contested. It would be pretty easy to balk over $500. There is absolutely no competent evidence that there is any type of damages sustained by this. In fact, he -- I take that back. He ended up renting the property anyway.

MR. KRAWCZYK: Might I just address two issues, Your Honor, just real quick that Mr. Radeker raised today? This is the first time. Mr. Radeker raised the idea that the rule is somehow arbitrary because it -- you have to seek permission, and permission can be denied for any reason.

I think his client is estopped from raising that issue at this point because he never sought permission, at least not before putting the sign up. I think he understood exactly what the rule said, which was no signs allowed unless you seek permission, and he took it upon himself, number one, to just say that rule doesn't apply to me.

He said it for years. He doesn't like it. It doesn't apply to me. You know, I don't care what you say.

I'm going put my sign up. Had he first initially sought -- officially sought permission from the association, he might have that argument, but he has waived that argument by basically not following the rules. I have that argument, number one.

Number two, on the idea that this association does not have the power to fine, I want to again raise to the court the understanding that the bylaws were available, the finding, for instance, they did have the authority.

The case he raises -- in the very short time I've had to look at it -- is about enforcement. Using a fine for the enforcement of a deed restriction that wasn't recorded as a deed restriction.

Essentially, the case he raises, the Rawlinson Road Homeowners Association says -- in that particular case, the homeowners association created a deed restriction, no boats allowed in your driveway by bylaw.

What the master says, you can't do that, okay. And then -- but if you really look that the case, the appellate court does not address the underlying issues. Basically, in that case, the only issues that were raised is whether or not the master used an improper analysis on the -- on the summary judgment standard and whether or not they had improperly excluded testimony and not entitled to an injunction.

I mean, basically, that case was the lawyer for the homeowners association had come to this hearing completely unprepared and got slammed because he had provided no evidence and no testimony. And as a result, that's what the court focused on, didn't focus on whether -- it's certainly -- you know, if he wants to use it for the proposition that he's saying that this homeowners association doesn't have the authority to do it, then you can clearly -- if you were to take the language that he's pulling out, you clearly -- the master says if you want to fine, you've got to put it in your deed.

Well, that would imply that you could do it, so I mean, I think it's kind of a double-edged sword for him on that. So, you know, if he's going to hang his hat on one, you can't have the other. So that's -- those are the only two issues I wanted to raise, Your Honor.

THE COURT: Okay. All right. I'm going to read everything y'all submitted. We'll figure something out. Hopefully, whichever way I rule, you will get this worked out.

MR. KRAWCZYK: Thank you, Your Honor.

MR. RADEKER: Thank you, Your Honor.

MR. GROTE: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

COPY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CASE NO. 2012-CP-40-6974

S. Coley Brown,

Plaintiff,

vs.

Spring Valley Homeowners Association, Inc.,

Defendant.

AFFIDAVIT OF S. COLEY BROWN

RICHLAND COUNTY
FILED
2012 OCT -9 PM 1:58
JANETTE W. McBRIDE
C.C.P. & G.S.

Personally appeared before me S. Coley Brown, who, first being duly sworn, deposes and says as follows:

1. I am the Plaintiff in this case. I have personal knowledge of the facts set forth in this affidavit and am competent to testify about them.
2. The attachment to this affidavit labeled Exhibit K (which is so labeled because it is Exhibit K to Plaintiff' First Set of Requests to Defendant to Admit in this case) is a copy of an information guide that Spring Valley Homeowners Association ("the Association") provided to me when I bought the property involved in this case.
3. This document did not put me on notice that the Association took the position that it could fine its members, and I did not find out that it took that position until a significant amount of time after I closed on the purchase of the property in Spring Valley that I own.
4. Based on what is on page four of the information guide, I believed that owners were permitted to place one for sale sign, that complied with the measurement requirements, per house.
5. In a later meeting of the Association, I asked Harry Goldberg, who was and is on the Association's board, whether Spring Valley owners were allowed to put up such signs or not. He replied that "the deeds prohibit signs being put up" and that to change that would require changes to a thousand deeds, which would be "cost prohibitive."
6. Some time later, when I wanted to sell my Spring Valley property, I went to Russ Templeton, head of the Association's architectural committee, to ask him about

getting approval for a for sale sign. He said that I should not bring him a proposed sign, that he would not consider a proposed sign, and that no sign would be approved.

7. At the Demates' house around the corner from the house I own in Spring Valley, a for sale sign was up for over a year and was not taken down until the house sold. I looked into whether the owner got permission from the Association to put up a sign, and, to the best of my knowledge, the Association was never even asked for such permission, yet the Association took no action and did nothing about the for sale sign.
8. I want to sell the property I own in Spring Valley and would do so. A buyer would likely expect me to get rid of the notice of lien filed by the Association, and, in order to make a sale happen, I would pay the Association the $500.00 in fines it claims that I owe it for putting up a for sale sign. This would of course be a payment under protest.
9. Accordingly, it is my understanding that there is less than $10,000.00 in controversy in this case.
10. The way that Spring Valley interprets and enforces the restriction concerning for sale signs effectively prevents me or any other Spring Valley owner from selling property in the subdivision without a realtor to put an MLS listing for the house on the MLS website, and it also hampers a house from being sold with a realtor, since it eliminates the possibility of a buyer becoming interested in a Spring Valley house by passing by it and seeing that it is for sale.
11. In comparison with other comparable neighborhoods of the Columbia metropolitan area, Spring Valley has a high number of renters.
12. I do not live at the house I own in Spring Valley. I pay approximately $10,000.00 per year in property taxes for it, about $1,500.00 per year in hazard insurance for it, about $1,200.00 a year to keep the pool clean (or DHEC will take action about it not being kept up), and about $65.00 a month in yard maintenance. It costs me about $2,000.00 a year for the cost of regular physical maintenance of the property, which does not include things like roof repairs or painting.
13. I have rented this house over the years, and I have never broken even. The cost of keeping the house is consistently higher than the rent I collect. Further, depending on how cleanly and safely a given tenant uses the property, renting to some tenants is more expensive for me than renting to others.

14. Essentially, I have in my Spring Valley house an asset I cannot meaningfully use and cannot liquidate because of the obstacles to getting it sold that the Association has put in my way.

15. Based on my knowledge, I would say that prices for property in Spring Valley generally are declining more than at the average rate of decline in Columbia.

FURTHER AFFIANT SAYETH NOT.

S. Coley Brown

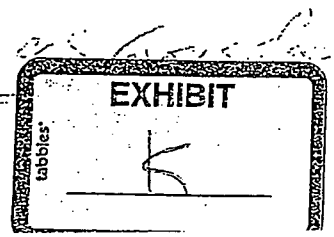
SWORN to before me this
20th day of June, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 5/21/2017

Information Guide

Deed Restrictions & Covenants

Spring Valley
Homeowners Association
January, 2003



We are delighted to have you as part of our community. As a property owner you are automatically a member of the Spring Valley Homeowner's Association. The Association is managed by an all volunteer Board and is ready to assist you within reasonable limits.

The strength of our community is a common desire to keep a pleasant and safe neighborhood, neat landscapes, clean streets and stable property values. We need your help to accomplish these objectives. This informational guide will give you answers to many of the questions you may have regarding your rights and responsibilities as a Spring Valley Homeowner. If you have further questions or require clarification, please contact the Association Manager or a member of our volunteer Board of Directors.

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History

Spring Valley Subdivision and Spring Valley Country Club were developed by Mr. Edwin Cooper through Pine Springs Inc. in the early 1960's. Mr. Michael J. Mungo, through Spring Valley Associates, developed tracks known as Flora Tract I & II beginning in 1976. Later, Spring Valley was expanded by extending East Springs Road (Section 12) and West Springs Road (Section 16). Old Spring Valley expanded with the addition of patio homes (Section 14); Sweet Gum (Section 15); Camberely Court, Enlow Court, Briarberry Road, and Wild Cherry Road Section 10). In 1976 the Spring Valley Homeowners Association was established by the residents. The residents accepted title to the roads, lakes, dams, spillways, parks, and common areas. This transfer gave the Spring Valley Homeowners Association the exclusive right to assess property owners in Spring Valley for the cost maintenance and security.

Three of the early residents who provided leadership and long-term support to the Spring Valley Homeowners Association are recognized by bronze plaques in the Honor Garden near the main entrance. They are Major General Roger K. Rhodarmer who was the founding President and advisor to the Board of Directors until his death in 2001, Mrs. Roberta Dunn who was a founding director and the Administrative Manager until her death in 1999, and Colonel John O. Scullion, a founding director, who later maintained the common areas until shortly before his death in 1998.

2

Assessments

The indenture entered into between Pine Springs, Inc. and the Spring Valley Homeowners Association and between the Spring Valley Associates and the Spring Valley Homeowners Association assigns to the Spring Valley Homeowners Association the exclusive right to assess and collect from the property owners in Spring Valley charges for maintenance, repairs and security. These charges cover road and common area maintenance, security services and administrative costs. Bills are sent quarterly and are due on the first day of the quarter. Finance charges on past due accounts will be added as indicated on statement.

Deed Restrictions

You should have received the Indenture when you received the deed to your property. The Indenture imposes certain restrictions on the use of your property. You should read these deed restrictions carefully. They have a solid legal foundation in South Carolina. On August 17, 1977 the South Carolina Supreme Court ruled that deed restrictions are property and their violation is damage to property, thus making the violator subject to payment for damages incurred. Avoid this by adhering closely to your deed restrictions, thereby avoiding damage to your neighbors' properties and helping to maintain property values.

The following paragraphs are quotes of restrictions in Spring Valley from various deeds:

(a) By acceptance of this deed, the GRANTEE covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association, hereinafter referred to as SVHA, and will abide by its duly enacted rules, regulations and by-laws, and the GRANTEE will pay to SVHA the periodic assessment due SVHA for the purpose of maintenance of the streets, roads, storm drains, common properties of SVHA, security services and other items determined by the by-laws of SVHA as duly adopted from time to time, a current copy of which shall be furnished upon request. GRANTEE agrees that such periodic assessments shall constitute a lien upon the property, subject and junior to the rights of all first mortgages, to the rights of the holder of any mortgage securing a purchase money obligation for the purchase of or an interest in any improved or unimproved lot to which such assessment related, and to the rights of the holder of any mortgage securing an obligation incurred in connection with the installation or construction of permanent improvements upon the lot to which such assessment relates, as well as personal obligation of GRANTEE and every succeeding owner.

Deed Restrictions (cont.)

3

(b) No structure shall be erected on this lot other than one single family dwelling and detached or attached garage of similar design, including servants' quarters, if desired; and no use shall be made of the property, or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family.

(c) No lot referred to herein shall be subdivided or reduced in size without the written consent of the GRANTOR.

(d) No noxious or offensive activity shall be carried on upon this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No hogs, goats, poultry, cows, or horses which shall constitute a nuisance or cause unsanitary conditions, or any undesirable situation to any neighboring property, shall be maintained on this lot; and nothing shall be done, or any condition permitted on said lot which shall pollute the water of any lake, stream or pond in or near Spring Valley Estates.

(e) No temporary structure or garage apartment shall be erected upon the lot.

(f) An easement is reserved unto the GRANTOR herein over five feet along each side line of each lot and over the front five feet and rear ten feet of each lot for the utility installations, utility rights-of-way and maintenance thereof, as well as drainage installations, drainage rights-of-way and maintenance thereof.

(g) All sewage disposal shall be through the sewer lines and plant to be provided by the developers or the East Richland County Public Service District, and no septic tanks shall be permitted except by separate agreement of the seller and approval of the Department of Health and Environmental Control.

(h) No building, fence, or other structure of any kind shall be erected, placed or altered on the lot hereby conveyed until the building plans, specifications, design and plot plan showing the location of the building, fence, or structure on this lot have been approved by the GRANTOR herein, in writing, as to conformity in size, type and quality, and as to harmony of design with existing structure with respect to topography and finished ground elevation.

Deed Restrictions (cont.)

(i) If the lot hereinabove described borders a pond or lake, then the GRANTEES use of the pond or lake shall be limited strictly to such purposes as may be authorized in writing by the grantor, and in the event of any damage to the dams after the year, 1965, the cost of repairs shall be borne by the bordering property owners on a pro-rate front foot basis. The use of motor boats on any of the lakes or ponds is to be prohibited unless authorized by the GRANTOR, the Spring Valley Country Club and a majority of the property owners owning property on the lake or pond.

(j) It is understood and agreed between the parties hereto that the hereinabove described property is sold as is and GRANTOR shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of streets after said streets have been dedicated to the county.

(k) Except as specifically provided for in this paragraph no "Sale" or "Rent" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:

1. Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon, not more than one (1) "For Sale" sign (the size and contents of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.

2. After the first sale of a lot with a dwelling thereon, no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by SVHA, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.

3. No sign shall ever be nailed or fastened to any tree at any time.

(l) No clothes lines, exposed garbage containers or other unsightly objects are to be erected or used on the property except where they are screened from the streets, lakes, adjoining properties or general view.

(m) No camper trailers, travel trailers, trucks, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles or commercial equipment of any kind are to be garaged or stored on the lots.

5

Deed Restrictions (cont.)

(n) The lot herein described adjoins a proposed golf fairway including tee and green designated as fairway number ___. It is agreed that such fairway may become a part of the Spring Valley Country Club's golfing facility under an agreement between Pine Springs, Inc. and Spring Valley Country Club, and in such event, the property so designed will be conveyed to Spring Valley Country Club for exclusive use of its members and guests as a part of the club's golfing facilities. Until such property is conveyed to the Club, it will be held by the GRANTOR as open space for the exclusive use of GRANTOR and the owners of adjoining lots, subject to such restrictions as grantor may impose to prevent littering, abuse, trespassing, unleashed animals, or motor vehicles of any kind, or other activities which may be an annoyance or nuisance to any of the adjoining property owners. No building, playgrounds or picnic facilities or other structures shall be constructed on the property and no other use shall be made thereof unless agreed, in writing, by GRANTOR herein and the owners of a majority of the lots adjoining such property. In any event, GRANTOR agrees to maintain the property as open space for a period of fifteen (15) years from December 1, 1969, or until Spring Valley Club elects to construct the golf course, whichever occurs first.

The following paragraph relating to Block Park was not numbered in the deed. The lake referred to is Park Shore Lake.

(o) The lake front property owners, together with their immediate families and house guests, are to have the privilege of using the entire lake for swimming, boating and fishing, subject to rules, regulations and prohibitions approved by a majority of the owners of the property bordering on the lake, including the medians and walkways leading to the park.

If your property lies in Block Park or Block I, your attention is called to Paragraph (o) which grants special privileges to these lot owners. There are 101 lots in Block Park and the nine (9) lots in Block I which makes a total of 110 lots, the owners of which have the special privileges regarding the use of Park Shore Lake, the recreation park and the walkway between Park Shore Drive West and Park Shore Drive East.

Paragraph (i) states that lake front property owners have responsibility for their dam. Four of the dams (Entrance Lake, Clark Lake and the dams at North Lake Road) are Class A according to the Army Corp of Engineers. If a Class A dam suffered a cataclysmic failure there probably would be loss of life as well as property damage.

Deed Restrictions (cont.)

The other dams are Class B, i.e., there would be only extensive property damage in the event of a cataclysmic dam failure. Therefore, all owners of property bordering any lake should be aware of Paragraph (i) under the Deed Restrictions, and their potential responsibilities in the unlikely event of a cataclysmic dam failure. Likewise, for similar reasons, the owners of the 110 lots in Block Park and Block I, not bordering on Park Shore Lake should be aware of the stipulations in Paragraphs (i) and (o).

There are 100 lots that border on the proposed golf course. If your property borders on one of the two (2) areas held as a proposed nine hole golf course, your attention is called to Paragraph (n).

Note: As stated, one of these areas comprising 27.5 acres lying west of Block Park was developed because the option to construct 3 holes of golf on it has expired. The area which would accommodate the other 6 holes surrounds Blocks V and W in Old Spring Valley. It has been determined that the property which would have accommodated the 6 additional golf holes will not be developed as a golf course. Ownership of this property has reverted to Pine Springs, Inc. who has proposed a plan to utilize this property by subdividing part of it to be sold as 6 new building lots plus 9.34 acres on Brickyard Road to be developed outside of Spring Valley at a later date. The remainder to be divided into approximately 73 parcels and sold to present property owners whose property is contiguous to it. This plan has been approved and implemented.

The proposed golf course lots referred to in paragraph (n) above no longer exist. The acreage west of Block Park was developed by Pine Springs as Sweetgum Road. The acreage surrounding the proposed golf course in Blocks V and W was developed by Pine Springs into residential lots and individual parcels that were offered for sale to the adjoining property owners. Those adjoining parcels that have not been sold within ten (10) years (from 1993) will be conveyed by Pines Springs, Inc. to the Spring Valley Homeowners Association as common grounds.

Security and Safety

In order to maintain the residential quality and tranquility of the Spring Valley community, appropriate rules and regulations are needed to promote security and safety. Such provisions, as herein enumerated, are applicable to all residents, their guests where appropriate, visitors, and other such persons to include contractors, builders, and subcontractors. Our road system is private, and therefore access can be restricted to promote security and tranquility. At the same time, the state traffic control laws apply and can be enforced by any law officer as well as by our private security service.

1. The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

2. Traffic signs are posted for the safety of all residents, as well as to aid in the movement and control of vehicular traffic. The security force is authorized to issue citations for traffic violations. Fines paid or bonds forfeited go into the County Treasury.

3. The authorized Spring Valley bumper stickers (decals) must be displayed in plain view on the front and rear of all motorized vehicles, i.e., automobiles, recreational vehicles, motorcycles, motorbikes and mopeds. (These stickers can be obtained by completing the application form available from a security officer or from the Administrative Manager.)

4. Motorbike operators are also required to comply with the traffic laws of South Carolina. All such two-wheel vehicles must meet all equipment requirements, have vehicle licenses, and their operators must be of age and licensed, as required by the South Carolina Motorcycle Laws. Pedal bicycles with helper motors of less than one horsepower may not be operated by persons under 12 years old, and of course, they are not eligible for a license to operate larger motor-driven vehicles.

5. The private road network of Spring Valley is not a race track for any type of motorized vehicle, nor should they be allowed to emit loud noises which are disturbing and distracting to the residential neighborhood. Again, this is the responsibility of parents to be sure that their children operate these vehicles in a mature and responsible manner.

Security and Safety (cont.)

6. Richland County has a "leash law" and the ordinance states: "that a dog be controlled by a leash or under the control of the owner and obedient to that person's command or within the property limits of its owner or keeper." Since this is a county-wide ordinance, the dog catcher is authorized to enter Spring Valley in response to a complaint. He is also authorized to enter the property of the dog's owner if the pursuit leads him there, provided he has seen the dog loose in violation of the ordinance. If you have a pet, and if you love your pet, please keep it at home and under control. If you have a complaint, the telephone numbers of the Richland County Animal Control Center are 929-6000 and 309-3297.

7. No soliciting is allowed in Spring Valley. If you are aware of unauthorized solicitations, please notify our Security Service at 261-9079.

8. Normal working hour guidelines for construction personnel who are working within Spring Valley are from 7 A.M. - 6 P.M., Monday through Friday. In the event extensions of this time are warranted, clearance and notification must be obtained from the Chairman of the Security Committee of the SVHA, or in his absence, from the private security agency responsible for security in Spring Valley. Such approvals must be obtained for **each** extension. No blanket extensions will be granted. However, in no event will work be permitted to be accomplished on Sunday or on the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving or Christmas except for emergency repairs due to natural disasters such as wind, fire or storms. No occupancy of unfinished houses is permitted.

Our security is furnished under a contract with a private security company. Their principal function is to patrol the area and man the gates at times established by the Spring Valley Homeowners Association. Security personnel are on duty at all times. The Richland County Sheriff has stated that Spring Valley has one of the lowest crime rates of any area in Richland County and he attributes this to the monitoring which is done by our private security service. Only through cooperative effort of the entire residential community can Spring Valley continue to be one of the major areas in Richland County having a minimum of serious incidents. Keeping a watchful eye out for your neighbors' properties and reporting suspicious activity can be of great help. You should also advise Security when you are going to be out of town for an extended period of time so that your property can be checked.

Security and Safety (cont.)

Private security officers are authorized by the Act to Regulate the Private Detective and Private Security Business (R 630, S 311) as follows:

> "Section 13. Any person covered by the provisions of Section 9 or properly registered or licensed under this Act who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and powers which Sheriff's have to make the arrest of any persons violating or charged with violating any of the criminal statues of this State, but shall have such powers to arrest only on the aforementioned property."

In addition, the Richland County Sheriff's Department provides routine patrols and is charged with answering calls in our community. In case of emergency, call 911.

Section II
By-Laws
10

By-Laws

Article I: Name and Location

Section 1. The name of this Corporation is Spring Valley Homeowners Association. It was incorporated under the Laws of the State of South Carolina on May 6, 1976.

Section 2. The principal office of the Association shall be in Columbia, South Carolina, with such mailing address as determined by the Board of Directors.

ARTICLE II: Definitions

Section 1. "Association" shall mean and refer to Spring Valley Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Properties" shall mean and refer to the real property conveyed to the Association and held for the use and benefit of the owners of property in Spring Valley Subdivision.

Section 3. "Residential Lot" shall mean and refer to any unimproved parcel of land located within Spring Valley Subdivision as defined herein below which is intended for use as a site for a detached, single family dwelling.

Section 4. "Family Dwelling Unit" shall mean and refer to any Residential Lot on which there has been constructed a detached, single family dwelling.

Section 5. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of any Residential Lot or Family Dwelling Unit.

Section 6. "Spring Valley" and "Spring Valley Subdivision" shall mean the original subdivision as developed by Pine Springs, Inc. including that area known as Spring Valley East, all as shown on a plat entitled "Composite Map of `Spring Valley' Richland County, near Columbia, South Carolina" dated October 8, 1975, revised April 21, 1977, recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X, pages 9086 A and B, plus that area known as Flora Tract I, containing 49.3 acres, and shown on a plat prepared for Edwin H. Cooper and C. W. Haynes & Co., Inc., by McMillan Engineering Co., dated December 17, 1975, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book W at page 125, and, if and when purchased by Pine Springs, Inc. that area known as Flora Tract II, containing 31.46 acres, consisting of Parcel "C" and Parcel "D" shown on a plat prepared for Pine Springs, Inc. and A. C. Flora by William Wingfield, R.L.S., dated December 14, 1970, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X at page 1366, plus any areas which may hereafter be accepted by the Association in accordance with these by-laws and not in violation of that certain Indenture, dated May 31, 1977, by and between Spring Valley Associates, Inc., Pine Springs, Inc., Spring Valley Homeowners Association and Spring Valley Roads & Parkways, Inc. recorded in the Office of the Register of Mesne Conveyance for Richland County in Deed Book D 426 at page 347.

By-Laws (cont.)

Section 7. "Board of Directors" shall mean Board of Directors of the Spring Valley Homeowners Association as regularly and duly elected from time to time according to the by-laws of the Association.

Section 8. "Members in Good Standing" shall mean the members of the Association as defined in Article IV whose voting rights have not been suspended as provided by Article IX hereof.

ARTICLE III: Purposes and Powers

The corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purposes for which it is formed are:

> To provide an agency through which the Owners of property within Spring Valley may exercise management and control of the roads, streets, parks, and common properties within Spring Valley in order to maintain aesthetic standards within the subdivision and to provide adequate security protection to the residents and users thereof and for these purposes:
>
> (a) to own, acquire, operate and maintain residential park, common areas, streets, roads, footways, lakes, dams, spillways; (b) to provide private police protection; (c) to maintain unkempt lands and trees in the Common Properties; (d) to fix assessments to be levied against the Residential Lots and Family Dwelling Units; (e) to pay taxes, if any, on the Common Properties; (f) enforce any and all covenants, restrictions and agreements applicable to the property within Spring Valley; and (g) to do any and all other things that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents and owners within Spring Valley.

ARTICLE IV: Members

Section 1. The Association shall have three (3) types of memberships:

(a) Regular Member - any owner of record of a Family Dwelling Unit in Spring Valley.
(b) Associate Member - the owner of a Residential Lot.
(c) Additional Member - Spring Valley Country Club.

Section 2. Members' Rights in Property. None of the members or officers of the Association shall have any vested interest in any money or other property belonging to the Association upon termination of his membership in the Association for any reason, nor shall he have any right to demand that any property, real or personal, belonging to the Association be turned over to him except as the law of South Carolina provides otherwise.

By-Laws (cont.)

ARTICLE V: Financial Participation of Members

Section 1. Method of Assessment.

(a) The initial assessment shall be $10.00 per month for each Family Dwelling Unit and $6.00 per month for each Residential Lot. The initial assessment for the Additional Member shall be $150.00 per month. The Board of Directors shall have the right to change the amount of the assessment from time to time, provided that any increase shall be proportionately uniform among all classes of members; and provided, further, that in the event the Board of Directors shall increase the "assessment set by the membership" by more than 20% of the said assessment rate, the membership shall have the right to void or reduce the amount of increase by action taken at a meeting of the membership called and held in accordance within 90 days after receipt of notice of such proposed increase. The term "assessment set by the membership" shall mean the latest assessment approved by membership vote, whether such vote establishes an assessment or results in a refusal to void an assessment set by the Board, and shall include the initial assessment set forth above.

(b) Assessments upon Residential Lots shall be made only with respect to those lots which have available all utility services planned to be installed by the developer and which front on a paved street or road.

(c) Owners of real estate are responsible for payment of assessment and compliance with established rules and regulations levied against the property even though the property has been rented to others.

Section 2. Manner of Payment

Each member's payment shall be due and payable quarterly. The Treasurer will notify members of the sum and due date. A service charge at the rate of 18% per annum, compounded quarterly, will be calculated on the balance of any member's account unpaid as of the beginning of the next succeeding quarter.

Section 3. Use of Assessments

The monies collected by the Association shall be used for the maintenance of roads, lakes, dams, and common areas in Spring Valley to which recorded title is held by the Association, the providing of private police protection for the residents of Spring Valley, the operational expenses of the Association, the enforcement of the rights of the Association, and any other purposes which from time to time may be deemed necessary by a majority of the votes cast by the membership in accordance with the provisions for voting as specified in these By-Laws; provided, however, that those Owners who have obligations by virtue of recorded covenants to maintain the lakes, dams and spillway areas shall be solely responsible for such maintenance, the Association in such instances being merely an agency for the administration of such obligations.

By-Laws (cont.)

ARTICLE VI: Meetings of Members

Section 1. Annual Meeting.
The annual meeting shall be held on the second Monday of November at the hour of eight o'clock in the evening for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

Section 2. Special Meetings.
Special meetings of the members, for any purpose or purposes, unless otherwise provided by statute, may be called by the President or by a majority of the Board of Directors, and shall be called by the Secretary at the request of members in good standing representing not less than ten percent (10%) of the voting power of the Association.

Section 3. Place of Meeting.
The Board of Directors shall designate any place in the County of Richland as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

Section 4. Notice of Meeting.
Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 30 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, to each member entitled to vote at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid. Accompanying, or incorporated in, the notice shall be a description of the significant actions which shall have been taken by the Board of Directors and Committees of the Board since the last meeting as well as other information of interest or concern to the membership.

Section 5. Record Date for Notice and Vote.
Those names appearing on the books of the corporation as members as of a date chosen by the Board of Directors, which date shall not be less than 30 nor more than 50 days before the date of the meeting, shall be those who shall be entitled to receive notice of any annual or special meeting and who shall be entitled to vote at such meeting.

Section 6. Quorum.
Members of the Association in good standing having ten percent (10%) of the entire voting power of the Association, represented in person or by proxy, shall constitute a quorum at a meeting of the membership. If less than a quorum is present at a meeting, the holders of a majority of the voting power present may set a date for a substitute meeting not less than 30 nor more than 50 days later. At such subsequent sub-

By-Laws (cont.)

stitute meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding withdrawal of enough members to leave less than a quorum.

Section 7. Voting of Membership.
Each Regular Member and each Associate Member in good standing shall be entitled to one vote for each Family Dwelling Unit and/or Residential Lot owned by such Member on each matter which is before the membership of the Association. The Additional Member shall be entitled to Fifty (50) votes on each such matter. At all meetings of members, a member may vote in person or by proxy executed in writing and filed with the Secretary of the Association before or at the time of the meeting. Where a Family Dwelling Unit or Residential Lot is owned by more than one person as tenants in common, joint tenants, life tenant and remainderman, or otherwise, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot. Voting by the Additional Member and other corporate members shall be by the officer, agent or proxy designated in the By-Laws or in a resolution of the Board of Directors of such member. In the absence of any such designation, the president, any vice president, secretary and treasurer of such member shall be presumed to possess, in that order, authority to vote for such member.

Section 8. Votes Required. A majority of votes cast at a meeting of members, duly held, at which a quorum, pursuant to Article VI, Section 6, is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting except as otherwise provided for by these By-Laws.

ARTICLE VII: Board of Directors: Number: Term of Office

Section 1. Number.
The Board of Directors shall consist of nine (9) elected members of the Association, who shall serve until their successors shall be elected by the members of the Association, and two (2) honorary directors. (Amendment to By-laws adopted at Annual Membership Meeting on November 28, 1977.)

Section 2. Term of Office.
At the first annual meeting, Association members shall elect two (2) Directors for a one (1) year term, (2) Directors for a two (2) year term, and three (3) Directors for a three (3) year term. At each Annual Meeting thereafter members shall elect successors to the expired Board Member terms for terms of office of three (3) years each. Board Members may succeed themselves or be elected to a different position.

By-Laws (cont.)

Section 3. Directors and Officers.
Four of the members of the Board of Directors shall also be elected by the Board to fill the offices of President, Senior Vice-President, Secretary and Treasurer. The initial President and Secretary shall be those Directors who shall have been elected at the first annual meeting of members for one (1) year terms. The Senior Vice-President shall be one of the two Directors who shall have been elected at the first annual meeting of members for a two (2) year term. The Treasurer shall be one of the three Directors who shall have been elected at the first annual meeting of members for a three (3) year term. The officers shall serve at the pleasure of the Board of Directors.

Section 4. Removal.
Any Director may be removed from the Board, with or without cause, by a vote of the Members of the Association. In the event of death, resignation, or removal of a Director, the vacancy may be filled by the remaining Directors until the next Annual Meeting of the members of the Association or until any special meeting of the members called for the purpose of electing Directors.

Section 5. Compensation.
The Directors shall receive no compensation for attendance at regular or special meetings, provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefore.

Section 6. Honorary Directors of the Association.
Honorary Directors shall have voting privileges but shall not be permitted to hold any office in the Association. These Directors shall be the President of Pine Springs, Inc., and the Additional Member or their designated representatives.

Article VIII: Nomination of Directors

Section 1. Nomination.
Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nomination may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a Chairperson, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting of the Members, to serve from the close of each Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for the election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members only.

By-Laws (cont.)

Article IX: Meeting of Directors

Section 1. Regular Meetings.
Regular meeting of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings.
Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two of the Directors, after not less than two (2) days notice to each Director.

Section 3. Quorum.
A majority of the number of Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

Article X: Powers and Duties of the Board of Directors

Section 1. Powers
The Board of Directors shall have the power to:
(a) adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the Members and their guests thereon and to establish penalties for the infractions thereof:

(b) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended for a period not to exceed sixty (60) days from infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the By-Laws or the Articles of Incorporation, including the enforcement and exercise of all conditions, covenants, restrictions and limitations contained in deeds given by Pine Springs, Inc. or Spring Valley Associates, Inc. to lots or residence in Spring Valley;

(d) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors or if unusual circumstances forces resignation;

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

(f) appoint such committees as it deems appropriate in accordance with Article XII

By-Laws (cont.)

Section 2. Duties
It shall be the duty of the Board of Directors to:

(a) establish, levy, assess and collect the assessments or charges pursuant to the provision of Article V of these By-Laws and covenants in the Deeds;
(b) cause to be kept, a complete record of all its acts and corporate affairs;
(c) furnish, upon demand by any Owner liable for an assessment, a certificate in writing signed by an Officer of the Association setting forth whether any assessment owed by such owner has been paid. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;
(d) supervise all Officers, agent and employees of this Association , and to see that their duties are properly performed;
(e) (1) send written notice of each assessment to every Owner subject thereto at least ten (10) days in advance of each assessment period;
(2) after other methods fail, to pursue all available legal remedies as necessary to collect all charges or assessments which are not paid within sixty (60) days after due date;
(f) procure and maintain adequate liability and hazard insurance on property owned by the Association;
(g) cause the Common Properties to be maintained; and
(h) see that all provisions of the By-Laws are complied with.

Article XI: Officers and Their Duties

Section 1. Enumeration of Offices.
The offices of the Association shall be a President, a Senior Vice President, a Secretary and a Treasurer, all of whom shall at all times be Members of the Board of Directors, and such other officers as the Board may from time to time designate.

Section 2. Election of Officers.
The election of Officers shall take place at the first meeting of the Board of Directors following the annual meeting of the Members.

Section 3. Special Appointments.
The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

By-Laws (cont.)

Section 4. Resignation and Removal.
Any Officer may be removed from office with or without cause by the Board of Directors. Any Officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date accepted by two or more Board members.

Section 5. Vacancies.
A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 6. President.
The President shall be the principal executive Officer of the Association and shall, in general, supervise and control all of the business of the Association. He shall, when present, preside at all meetings of the Members. He may sign, with the Secretary or any other proper Officer of the Association, any deeds, mortgages, bonds, contracts, or other instruments which the Members or Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Members or Board of Directors or these By-Laws to some other Officer or agent of the Association; and in general shall perform all duties incident to the office of President and such other duties as may be assigned to him by the Board of Directors.

Section 7. Senior Vice President.
In the absence of the President or in the event of his death, inability or refusal to act, the Senior Vice President shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Senior Vice President shall perform such other duties as from time to time may be assigned to him by the President or the Board of Directors.

Section 8. Secretary.
The Secretary shall be responsible for written minutes of all meetings of the Board of Directors and the Association and maintain an official Minutes Record Book containing copies of the minutes; record, transcribe, and deliver to the Board of Directors the official minutes of every annual and special meeting not later than ten (10) days after the date of such meeting; act as custodian of all records, except those specifically assigned to others; publish newsletters after each Board meeting and prior to annual meetings; provide letters of welcome to newcomers and furnish all material relating to the Association and their responsibilities as Members; maintain current listings of all homeowners and lot owners; and perform all of the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or Board of Directors.

By-Laws (cont.)

Section 9. Treasurer.
The Treasurer shall have charge and custody of, and be responsible for, all funds of the Association; receive and give receipts for monies in the name of the Association in such banks, trust companies, or other depositories as may be selected by the Board of Directors; be responsible for presenting a financial report to the Membership at the annual meeting which shall include a financial accounting of the Association for the previous year, and a budget for the coming year; keep an accurate and detailed account, in the Treasurer's permanent book, of all monies received and paid; submit a statement at the regular meetings of the Board of Directors and the Association, including total balance on hand at the beginning of the period covered by the report, and the separate amounts credited to the general fund, receipts, disbursements, and the total balance on hand at the date of the report; provide notices of assessments to all Owners at least ten (10) days in advance of each assessment period; provide notice to delinquent Members and supply pertinent information if requested by a Member; notify the Board of Directors of Owners who have not paid their assessment within sixty (60) days after the due date; and do all other things which from time to time may be assigned to him by the Board of Directors.

Section 10. Compensation.
No compensation shall be paid to the Officers as such for their services, but by resolution of the Board of Directors and approved by the general membership.

Article XII : Committees

The Association shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XIII: Contracts, Loans, Checks and Deposits

Section 1. Contracts. The Board of Directors may authorize any Officer or agent or agents to enter into any contract or execute and deliver any instrument in the name of the Association, in an amount not to exceed an approved budgeted item plus any reserve fund which the Association may maintain for that specific item.

Section 2. Loans. No loan shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

By-Laws (cont.)

Section 3. Checks and Drafts. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such Officer or Officers, agent or agents, of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE XIV: General Provisions

Section 1. Waiver of Notice. Unless otherwise provided by law, whenever any notice is required to be given to any Member, Director, or Officer of the Association under the provisions of these By-Laws, a waiver thereon in writing, signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

Section 2. Amendments. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by a two-thirds majority of those Members present and voting at any annual or special meeting of the Association, provided the notice of such meeting, given in accordance with the requirements of Article VI, section 4, shall have given notice of the intention to alter, amend or repeal the By-Laws at such meeting, briefly setting forth the purpose of such proposed change.

Section 3. Fiscal year. The fiscal year of the Association shall be determined by the Board of Directors.

Section 4. Procedure. All meetings of the membership and of the Board of Directors shall be conducted in accordance with Roberts Rules of Order Revised according to the most recent edition.

Section 5. Property of Members and Association to be separate and distinct. The private property of the Members shall not be subject to the payment of Association debts, no matter how acquired, to any extent whatever, however each and every member shall be permanently liable for all dues and assessments not timely paid.

Section 6. Indemnity. The Association shall indemnify and hold harmless each person, his or her personal representative, heirs and assigns who shall or did serve as a Director or Officer of the Association from and against any and all claims or liabilities to which such persons become subject by reason of having heretofore or hereafter been a Director or Officer of the Association or by reason of any action alleged to have been taken or omitted by such persons as Director or Officer and shall reimburse each such party for all legal and other expenses reasonably incurred by him in such connection with any such claim or liability; provided however that no such person shall be indemnified against or be reimbursed for any expense

By-Laws (cont.)

incurred in connection with any claim or liability arising out of said party's own negligence or willful misconduct.

Section 7. Dissolution of Corporation. The corporation may be dissolved upon the vote of a two-thirds majority of the entire membership of the Association, provided the notice of the meeting, given in accordance with the provisions of Article VI, Section 4, shall have stated that it would be for the purpose of considering dissolution of the corporation.

Section 8. Authority and Powers. All authority and powers not expressly granted to the Officers and Directors in these By-Laws are reserved to the membership.

Section 9. Annual Report. An annual report shall be prepared and presented to the membership at the annual meeting. This report shall include a financial accounting of the Association for the previous year and a budget for the coming year.

Common Questions and Answers

Here are the answers to many of the most commonly asked questions about Spring Valley. The questions have been categorized as follows:

General Questions *Page 22*

Architectural Review *Page 23*

Spring Valley Country Club *Page 23*

Garbage Service *Page 24*

Business Operations from Residence *Page 25*

Lakes *Page 26*

Restrictions *Page 26*

Security *Page 27*

Spring Valley Homeowners Association *Page 28*

General Questions and Answers

We have a question that is not covered in the Green Book. What should we do?

The Spring Valley Homeowners Association has several resources available to assist you. First, the Association has a Manager. You can reach the Manager at 788-2410. Common questions and problems often involve many of the topics covered in this section of the Green Book. Even if your problem does not directly involve the Association, the Manager may be able to assist you.

Second, the SVHA Administrative Manager handles all inquiries concerning Association billings and the sale of property. You can reach the Administrate Manager at 319-3685.

The third resource available to you is your Association Board. Each Board Member has been assigned an area of responsibility. A list of names, phone numbers, and areas of responsibility is contained in each SVHA quarterly newsletter. Please feel free to contact the Association Manager, the Administrative Manager, or a Member of the Board if you have any questions or concerns.

Architectural Review

We are planning on building a new home in Spring Valley. What do we need to do?

First, you need to review the deed restrictions. Please pay particular attention to minimum square footage and set back requirements. Secondly, notify your neighbors who are within view of your planned construction (new home, addition, fence, etc.) of your plans. The purpose is to seek comments, pro or con, about the proposed construction. This will preclude surprise and controversy when the construction begins. Finally, your plans must be submitted to the Chairman of the Architectural Committee for approval. This committee will verify that your plans comply with the requirements. In addition, the committee checks to make sure that the style of the house is appropriate and does not match another home on your block.

We are planning an addition to our home. Do we need approval from the Architectural Committee?

Yes. All additions and alterations to the exterior of your home require approval. This would also include fences, gazebos, unattached garages, satellite dishes and other structures. Please follow the guidelines stated in the previous question. Storage sheds cannot be approved.

Spring Valley Country Club

Is there a time requirement associated with approval?

All approvals contemplate a start date within six months of approval and a completion date within eighteen months of approval. Extensions can be applied for with the Architectural Committee.

Does residency in Spring Valley include a membership in the Country Club?

No. The Spring Valley Country Club is a private organization that includes residents and nonresidents of the Spring Valley subdivision. For information about club membership, please contact the club office at 788-3080.

May non-members use the golf course after hours?

Access to the golf course is limited to club members with golf privileges.

Is the golf course available for evening walks?

The club asks that no one walk on the course unless he or she is involved in a round of golf. It is a nuisance to golfers to have walkers or pets on the course. Additionally, there is a danger of being hit by a golf ball.

Garbage Service

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Is it necessary to roll the "Herbie Curbie" trash can out to the street?

No. In fact, Spring Valley restrictions prohibit you from doing so. Your Association has made arrangements for back door pick-up. Your county taxes include a small fee for this service.

Why does the garbage service pick up only a portion of yard trash?

Richland County has an ordinance that requires the garbage service to pick up all of the yard trash that has been boxed or bagged. In addition, the garbage service is to take the equivalent of two "Herbie Curbies" of loose yard trash. If you have a large pile of loose trash, it may take several visits before it will be completely removed. You can prevent this situation by boxing or bagging a portion of the yard trash. In addition, you should avoid combining yard trash with your neighbor's. The garbage service may mistake it as the yard trash of one household instead of two. Do not put yard waste on vacant lots as it will not be removed.

May I put yard debris in the "Herbie Curbie?"

County regulations prohibit mixing household garbage, recyclables and yard trash. For that reason, please do not mix these types of trash. Please put yard debris by the street. Do not put the yard trash in the street or in a place where water may push it into the drainage system. Tree limbs must be less than four feet long and less than four inches in diameter for removal. Any limbs larger than this must be removed by the homeowner.

What role did the Homeowners Association play in selecting our current garbage service?

None. The garbage service is selected by Richland County, not by your Association. Your Association has no formal role with the garage service. However, we do maintain an open flow of communications with them. Whenever there is a problem, the garbage service tries to work with us. Please note that the schedule is set by Richland County .

I have an old can of paint. May I put this in the garbage?

No. By law, this is a hazardous waste material. Use it, give it away or donate it to charity. If the paint can is open and completely dry the garbage service will pick it up for disposal on the same day as yard waste is removed. **The can must be completely dry. Place the can at the curb with the lid removed.**

Garbage Service (cont.)

How do I dispose of large items such as furniture and washing machines?

The washing machine and other large items such as furniture and appliances, will be picked up during the week of the second Monday of the month by the garbage collector. Place these items near the curb (*but not on the street*) in front of *your home* on the Monday of the second week. Do not place any debris or garbage on vacant lots. The garbage service will not pick up any refuse from unimproved lots. Doors must be removed from refrigerators and freezers.

How do I dispose of debris from construction or remodeling?

Lumber, cement, wood and other construction debris will not be picked up curbside. Have your contractor remove the debris or take it to the County Landfill. The nearest County Landfill is located on Caughman Road off Highway 215 North.

How do I dispose of trees?"

Trees will not be picked up curbside. They must be taken to the County Landfill. Branches less than four feet in length and four inches in diameter will be removed by the garbage service as yard waste. However, you must make sure that they are no larger than the dimensions stated above.

Business Operations from Residence

Is it permissible to operate a business out of our home in Spring Valley?

The deed restriction s in Spring Valley limit use to private residential purposes of a singe family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities and other activities that involve the public.

Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles or visitation by members of the public.

Lakes

Who is responsible for the lakes?

Responsibility for the lakes resides with the residents whose property borders on a given lake. Most of the lakes have their own Association that handles issues related to its particular lake. In addition, a member of the Association Board serves as the liaison to each Lake Association.

As a resident of Spring Valley, do I have access to the lakes?

Lake access is limited to those residents whose property borders on a given lake.

In order to perform necessary work in my yard, it will be necessary to lower the lake behind my house. With whom do I need to talk with about this matter?

Each lake should have its own "Lake Association". Your request to lower the lake should be submitted to the President of your lake association. In addition, please coordinate any such activity with the Association Board Member who oversees the lakes.

Restrictions

Are "For Sale" signs permitted?

Spring Valley deed restrictions prohibit all forms of signs within the subdivision. This includes all types of "For Sale" signs as well as lost pets signs, garage sale signs, remodeling signs, security service, and political signs. Balloons on mailboxes by owners or realtors are considered signs.

Is it permissible to operate a business out of our home in Spring Valley?

The Richland County Zoning Ordinance and deed restrictions in Spring Valley limit use to private residential purposes of a single family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities, and other activities that involve the public. Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles, or visitation by members of the public.

What about RVs, campers, boats, buses, commercial equipment, trailers and commercial vehicles?

These items are not permitted to be stored or parked in Spring Valley.

Security

What is the speed limit in Spring Valley?

The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

Are the citations given by Security "real tickets"?

The citations, including speeding tickets, are issued by authorized law enforcement officers. The Association does not receive a portion of the fine.

How do I get in contact with Security?

The mobile phone number for the officer on duty is 261-9079. If the officer is on another call or not available, a voice mail message service is in place to take your message. The officer will be back with you shortly.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are staffed by Security?

Spring Valley maintains twenty-four hour security every day of the year. It should be noted that events do take the officer temporarily away from the phone. He may be offering assistance to a resident or investigating a situation. This may prevent an officer from being immediately available.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are the gates open?

Spring Valley has four gated entrances, the main entrance on Two Notch Road is manned by security each night. The entrances from Flora Road and two from North Springs Road are locked to all traffic at night. Those wishing to gain access to Spring Valley should use the main entrance on Two Notch Road during those hours. If you are expecting guests after hours, please direct them to enter through the main entrance on Two Notch Road. You should contact security at 261-9079 prior to the arrival of your guest to inform security that your guest has your permission to enter Spring Valley.

There is a street light on my street which is not working. What should I do?

The street lights are maintained by SCE&G. One of the tasks assigned to Security is to note lights that are not working and report them to SCE&G. If you see a light that is not working, you may report it directly to SCE&G at 748-3027. If you prefer, you may call the Spring Valley Manager at 788-2410.

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Your Homeowners Association

Why do we have an Association?

Spring Valley was developed as a private community. As homeowners, we own the roads, drainage system, and common areas. The Association through the Board oversees the day-to-day management of these areas. In addition, the Association is here to assist the homeowners in maintaining the value, beauty, and integrity of Spring Valley. Providing security is an important aspect of this responsibility. The Board oversees activities related to these responsibilities.

How do I join the Association?

By owning property in Spring Valley, you are automatically a member of the Association and are subject to its restrictions, rules and regulations

When does the Association Board meet?

The Board meets on the third Monday of the month at 7:00 pm. The meetings are held at the Spring Valley Country Club. The Board does not meet in November due to the Annual Meeting. The December meeting is usually rescheduled due to the holidays.

How do I bring an issue to the Board?

You should contact the Administrative Manager and request that your issue be put on the agenda. If you prefer to bring your concern before the formal Board meeting, please contact the Administrative Manager. To be on the agenda, it is preferred that you notify the Administrative Manger before noon of the Friday before the meeting.

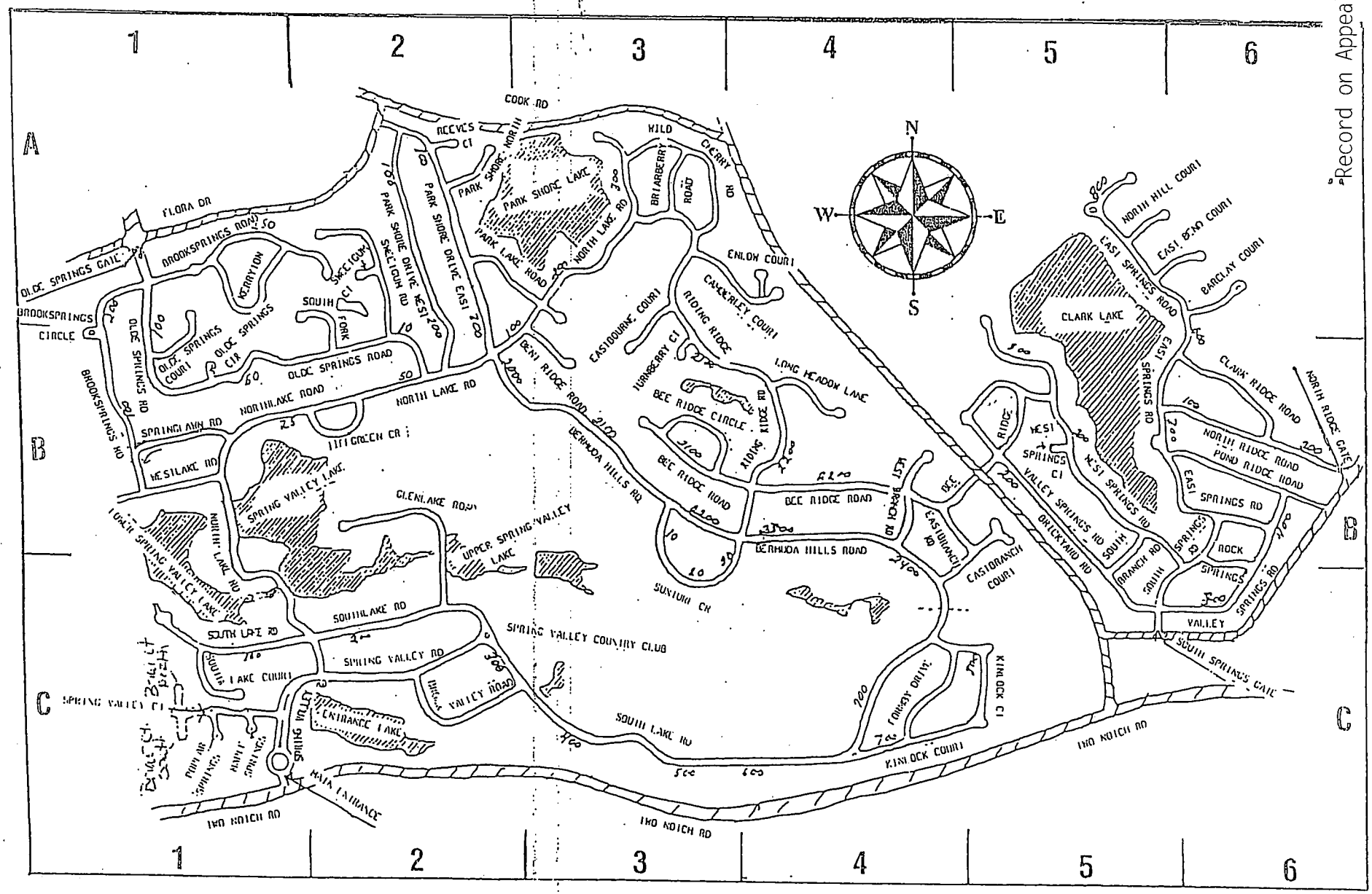
How can I become more active in the Association?

The Association is always looking for resident interested in participating in the activities of Spring Valley. Please express your interest to any Board Member.

Map on Back Cover

Street References

BARCLAY COURT	A-6	
BEE RIDGE CIRCLE	B-3	
BEE RIDGE ROAD	B-3	
BENT RIDGE ROAD	B-3	
BERMUDA HILLS ROAD	B-2	B-4
BRIARBERRY ROAD	A-3	
BROOK VALLEY ROAD	C-2	
BROOKSPRINGS CIRCLE	B-1	
BRIAR COURT NORTH	C-1	
BRIAR COURT SOUTH	C-1	
BROOKSPRINGS ROAD	A-1	
CAMBERLEY COURT	A-3	
CLARK RIDGE ROAD	B-6	
EAST BEND COURT	A-5	
EAST SPRINGS ROAD	A-5	
EASTBOURNE COURT	A-3	
EASTBRANCH COURT	B-5	
EASTBRANCH ROAD	B-5	
ENLOW COURT	A-4	
FORMBY DRIVE	C-4	
GLENLAKE ROAD	C-2	
KERRYTON ROAD	A-1	
KINLOCK COURT	C-4	
LONG MEADOW LANE	B-4	
MAPLE SPRINGS COURT	C-1	
NORTH HILL COURT	A-5	
NORTH RIDGE ROAD	B-6	
NORTHLAKE ROAD	B-2	A-2
OLDE SPRINGS CIRCLE	B-1	
OLDE SPRINGS COURT	B-1	
OLDE SPRINGS ROAD	A-1	
PARK LAKE ROAD	A-2	
PARK SHORE DRIVE EAST	A-2	
PARK SHORE DRIVE WEST	A-2	
PARK SHORE NORTH	A-2	
POND RIDGE ROAD	B-6	
POPLAR SPRINGS COURT	C-1	
REEVES COURT	A-2	
RIDING RIDGE ROAD	A-3	
ROCK SPRINGS ROAD	B-6	
SOUTH BRANCH ROAD	B-5	
SOUTH FORK	B-2	
SOUTH SPRINGS ROAD	C-5	
SOUTHLAKE COURT	C-1	
SOUTHLAKE ROAD	C-1	C-3
SPRING VALLEY COURT	C-1	
SPRING VALLEY ROAD	C-2	
SPRINGLAWN ROAD	B-1	
SUNTURF CIRCLE	B-3	
SWEETGUM COURT	A-2	
SWEETGUM ROAD	A-2	
TIFTGREEN CIRCLE	B-2	
TURNBERRY COURT	B-3	
VALLEY SPRINGS ROAD	B-5	B-6
WEST SPRINGS COURT	B-5	
WEST SPRINGS ROAD	B-5	
WESTBRANCH ROAD	B-4	
WESTLAKE ROAD	B-1	
WILD CHERRY ROAD	A-3	


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RECVES CI
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PARK SHORE DRIVE WEST
PARK LAKE ROAD
NORTH LAKE RD
WILD CHERRY RD
BRIARBERRY ROAD
ENLOW COURT
CASTLEBURNE COURT
CASTLEBURNE CI
RIDING RIDGE
LONG MEADOW LANE
BEE RIDGE CIRCLE
BEE RIDGE ROAD
BERMUDA HILLS RD
SUNTURN CR
CASTLEBRANCH COURT
CASTLEBRANCH CI
FLORA DR
BROOKSPRINGS ROAD
OLDE SPRINGS GATE
BROOKSPRINGS CIRCLE
OLDE SPRINGS RD
OLDE SPRINGS COURT
OLDE SPRINGS CIR
OLDE SPRINGS ROAD
KERRYTON
SKELTON DR
SKELTON RD
SOUTH CI
SOUTH FORK
NORTHLAKE ROAD
SPRINGLAWN RD
NESTLAKE RD
GREEN CR
SPRING VALLEY LAKE
GLENLAKE ROAD
UPPER SPRING VALLEY LAKE
NORTH LAKE RD
SOUTHLAKE RD
SOUTH LAKE RD
SPRING VALLEY COUNTRY CLUB
SPRING VALLEY RD
SOUTH LAKE COURT
SPRING VALLEY CI
ENTRANCE LAKE
SPRING VALLEY
MAIN ENTRANCE
TWO NOTCH RD
SOUTH LAKE RD
KINLOCK COURT
KINLOCK CI
FORESTBROOK DRIVE
CLARK LAKE
NORTH HILL COURT
EAST BEND COURT
BARCLAY COURT
EAST SPRINGS ROAD
CLARK RIDGE ROAD
NORTH RIDGE ROAD
POND RIDGE ROAD
NORTH RIDGE GATE
NESTSPRINGS CI
NESTSPRINGS RD
VALLEY SPRINGS RD
BRICKYARD RD
SOUTH SPRINGS GATE
BRANCH RD
SOUTH SPRINGS RD
ROCK SPRINGS
VALLEY SPRINGS

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-40-6974

S. Coley Brown,

Plaintiff,

vs.

Spring Valley Homeowners Association, Inc.,

Defendant.

PLAINTIFF'S FIRST SET OF REQUESTS TO DEFENDANT TO ADMIT

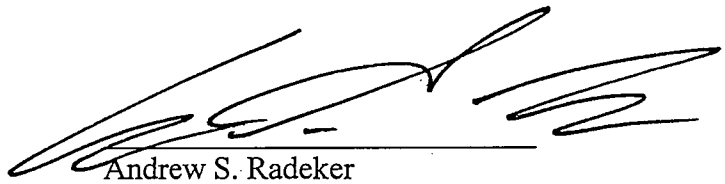
RICHLAND COUNTY FILED
2012 OCT -9 PM 1:57
JEANETTE W. McBRIDE C.P. & G.S.

The Plaintiff, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby propounds to the Defendant and serves for answer the following Requests to Admit:

1. The attached Exhibit A is a copy of a letter the Defendant, through its general manager, sent to the Plaintiff on or about October 4, 2011.
2. The attached Exhibit B is a copy of a letter from Plaintiff's counsel that the Defendant received in October of 2011.
3. The attached Exhibit C is a copy of a letter from Plaintiff's counsel (with its enclosures) that the Defendant received on or about December 8, 2011.
4. The attached Exhibit D is a copy of a letter and its attachment that an attorney for the Defendant sent to the Plaintiff on or about April 9, 2012.
5. The attached Exhibit E is a copy of a letter from Plaintiff's counsel to the attorney who sent the letter that is Exhibit D, along with a fax cover sheet and a fax result report showing that the law firm of that attorney for the Defendant received the letter from Plaintiff's counsel on or about May 3, 2012.
6. The attached Exhibit F is a copy of a letter to the Plaintiff from a law firm representing the Defendant that was sent to the Plaintiff on or about September 18, 2012.
7. The attached Exhibit G is a copy of the document entitled "NOTICE AND CERTIFICATE OF LIEN FOR HOMEOWNERS' FEES" that the Defendant recorded in the office of the Richland County Register of Deeds on September 13, 2012.

8. The attached Exhibit H is a copy of an "Information Guide" the Defendant publishes on its website.
9. The attached Exhibit I is a copy of a photograph of the sign that the Plaintiff placed on his property in Spring Valley.
10. The attached Exhibit J is a copy of a photograph showing the sign that the Plaintiff placed on his property in Spring Valley.
11. The attached Exhibit K is a copy of an "Information Guide" the Defendant provided to the Plaintiff at or around the time he bought property in Spring Valley.
12. There is no statute that authorizes or empowers the Defendant to fine its members.
13. There is no covenant that authorizes or empowers the Defendant to fine its members.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
October 15, 2012



Spring Valley Homeowners Association
PO Box 25246
Columbia, SC 29224
General Manager (803) 788-2410
Administrative Manager (803) 788-7711

04 October 2011

Mr. Coley S. Brown
6436 Westshore Rd
Columbia, SC 29206

Dear Mr. Brown,

This letter is a follow-up to our conversation this morning about the for sale or rent sign that you are displaying at 118 Spring Valley Rd.

Your decision to install the sign is a violation of our community's deed restrictions and creates an "unsightly condition."

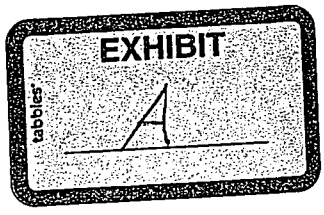
This means that you have fifteen (15) days to remove the sign. If it is still in place on 19 October 2011, then the fine schedule of one hundred (100) dollars per week will get underway. The schedule will run for fifteen (15) weeks. If the sign is removed before the fifteen (15) weeks are concluded, the fine will apply to the weeks it was displayed.

Thank you for your attention to this matter.

Cordially,

Carl A. Voges

Carl A. Voges, General Manager



LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn B. Beighley
* Mediator/Arbitrator

P.O. Box 50143
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

October 23, 2011

VIA U.S. MAIL
Mr. Carl A. Voges, General Manager
Spring Valley Homeowners Association
P.O. Box 25246
Columbia, SC 29224

Re: Restrictive covenants regarding "for sale" signs
My client: S. Coley Brown

Dear Mr. Voges:

Please be advised that I represent Mr. S. Coley Brown. I have reviewed your letter to Mr. Brown dated October 4, 2011. Based on the documents I have reviewed and what I understand has occurred, I do not believe the Association is correct to take the position outlined in that letter.

First, the information guide provided to Mr. Brown when he purchased property in Spring Valley quotes the restrictive covenants as stating that no "'Sale' or 'Rent' signs or other types of advertising or billboards shall be permitted . . . except that in cases of hardship, subject to prior approval by SVHA, one 'For Sale' sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale." The same language is in the information guide I printed from your website yesterday. The Association's apparent belief that "for sale" signs are absolutely prohibited by the restrictions is at odds with this language. Further, Mr. Brown advises that the Association has categorically refused to undertake any assessment of whether he is in a case of hardship. The Association has the obligation to make a good faith determination of whether a case of hardship exists. Please outline what the Association's process for making that determination is and let me know what information you would like from Mr. Brown in order to begin that determination process.

As the Association is not a governmental entity, I am curious about why the Association believes it can levy fines. Please provide me with the Association's basis for the belief that it has the power and authority to levy fines. (Also, how does the sign in question create an "unsightly condition" as stated in your letter?)

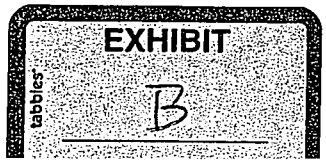
Thank you for your attention to this matter. Kindly provide the information requested on or before November 4, 2011. I look forward to hearing from you.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/
cc: Mr. Coley S. Brown



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December 8, 2011

VIA HAND DELIVERY BY COLEY BROWN
Board of Directors, Spring Valley Homeowners Association
c/o Harry L. Goldberg, Esq.

Re: Authority of homeowners' associations to fine their members

Dear Members of the Board:

As you know, I represent Mr. S. Coley Brown. I will not be attending the meeting this evening, and I authorize you to communicate directly with Mr. Brown at that hearing. I believe Mr. Brown is quite capable on his own of expressing to you the hardship that called for him to place a for sale sign on his Spring Valley property and of relating the facts of your Association's prior summary refusal to evaluate whether he should be allowed to put up a for sale sign.

I write to address a different matter: whether the Association may lawfully fine any of its members. It cannot. While our state appellate courts have never been presented with this question, courts in other states that have dealt with it have concluded that, since the power to levy fines is a governmental power, unless some statute has been enacted by a state in which the state authorizes homeowners' associations to fine their members, such associations lack the ability to do so – even if their covenants or by-laws say they can. I enclose a copy of two such decisions with this letter, Unit Owners Ass'n of Buildamerica-1 v. Gillman, 292 S.E.2d 378 (Va. 1982), and Vernon Manor Co-op. Apts., Section 1 v. Salatino, 178 N.Y.S.2d 895 (1958). South Carolina has no statute authorizing homeowners' associations to fine their members; thus, neither your association nor any other in this state has the power to do so. It does not matter that the by-laws say that you can. I trust that if the Association's by-laws said the Association could imprison a member for violating Spring Valley deed restrictions, no one on this board would believe that it would be lawful for the Association to do so. Fines are no different.

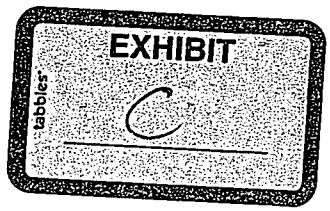
Furthermore, your by-laws cannot expand the authority granted under the Spring Valley covenants. The covenants do not authorize fines but only authorize periodic assessments. Plainly, a fine is not a periodic assessment.

Thank you for your attention. I trust that you will act in accordance with the law.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker



Record on Appeal 152
Enclosures

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223 Va. 752 (Va. 1982)

292 S.E.2d 378

UNIT OWNERS ASSOCIATION OF BUILDAMERICA-1, a Condominium

v.

Harry F. GILLMAN, et ux.

Harry F. GILLMAN and Saundra K. Gillman

v.

UNIT OWNERS ASSOCIATION OF BUILDAMERICA-1, a Condominium, John R. Pflug, Jr., Trustee, and Board of Managers of the Unit Owners Association of BuildAmerica-1.

Nos. 800180, 800171.

Supreme Court of Virginia.

June 18, 1982.

[292 S.E.2d 379]

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David C. Canfield, Arlington (Tolbert, Smith, FitzGerald & Ramsey, Arlington, on brief), for Gillman, et ux.

Frederick H. Goldbecker, Fairfax, for appellees Unit Owners Ass'n, etc.

Before

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CARRICO, C. J., COCHRAN, POFF, COMPTON, STEPHENSON, and RUSSELL, JJ., and HARRISON, Retired Justice.

ALBERTIS S.

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HARRISON, Jr., Retired Justice.

The Unit Owners Association of BuildAmerica-1, a condominium, filed its bill to enforce liens recorded against condominium units owned by Harry F. Gillman and Saundra K. Gillman based upon fines it had levied for alleged violations by them of its rules and regulations. It also sought to enjoin the Gillmans from bringing their garbage trucks onto the common elements of the condominium. The Gillmans filed their bill against the Board of Managers of the Association, seeking a declaratory judgment of their rights under the bylaws of the Association, injunctive relief, and the recovery of damages. The causes were consolidated, and upon trial, the lower court found the provision in the bylaws of the Association providing for the collection of fines to be unlawful, unconstitutional, and therefore unenforceable. The court did grant the Association certain injunctive relief and a judgment for $1250, representing counsel fees incurred by it. The Association and the Gillmans noted appeals.

The Association contends here that Article III, paragraph 2(m) of its bylaws, providing for the levying of fines, is not unlawful or unconstitutional as violative of the due process guarantees of either the federal or state constitutions, and that the award made by the trial court of counsel fees is unreasonably low. The Gillmans contend on appeal that the trial court failed to construe properly the bylaws, rules, and regulations of the Association as applied to them; erred in not applying the equitable defense of laches and estoppel against the Association; and erred in granting an injunction order which lacked standards for compliance or ascertainable scope and which, because of its vagueness, will give rise to further litigation.

The condominium involved is located in the southern part of Fairfax County and is described as a single, large industrial structure comprised of twenty-six small warehouse or garage-type units, surrounded by a parking area. The paved, blacktop parking

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area, which is a common element of the condominium, is designed to allow vehicles to drive around the entire length of the structure and to facilitate on-site parking in spaces which were lined off but undesignated.

The condominium was established under the Condominium Act, Code § 55-79.39, et seq., by master deed of John R. Pflug, Jr., dated August 16, 1974, and recorded in Fairfax County along with the bylaws of the Association. Article 6 of the deed provides [292 S.E.2d 380] that "[a]ll present and future owners, tenants, visitors and occupants of units shall be subject to, and shall comply with the provisions of this deed, the By-Laws and Rules and Regulations ... [of the condominium] as they may be amended from time to time." The deed stipulates that the condominium shall be administered by an Association whose membership is comprised of unit owners.

Article III, Section 2 of the bylaws of the

Association prescribes the powers and duties of its Board of Managers to include the operation, care, upkeep, and maintenance of the common elements, controlling the general use of all common elements, and taking all other necessary action for the sound management of the condominium. Article V, Section 11(c) enumerates certain restrictions on the use of units, and provides that "[n]o nuisances shall be allowed on the Condominium nor shall any use or practice be allowed which is a source of reasonable annoyance or which unreasonably interferes with the peaceful possession or proper use of the Condominium by its owners and occupants." Regulation 15 for the Condominium provides that "[n]o noxious or offensive activity shall be carried on in any Unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants."

By deed dated July 12, 1976, the Gillmans purchased Unit 17, and one year later, on July 13, 1977, purchased Unit 21 of the condominium. In each deed are the following provisions:

SUBJECT TO the reservations, restrictions on use, and all covenants and obligations set forth in the Master Deed, dated August 16, 1974 and recorded in Deed Book 4088 at page 266 and as set forth in the By-laws of the Unit Owners Association attached thereto and as it may be amended from time to time, all of which restrictions, payments of charges and all

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other covenants, agreements, obligations, conditions and provisions are incorporated in this Deed by reference and shall constitute covenants running with the land, to the extent set forth in said documents and as provided by law and all of which are accepted by the Grantees as binding and to be binding on the Grantees and their successors, heirs and administrators, executors and assigns or the heirs and assigns of the survivor of them, as the same may be.

AND the Grantors do hereby covenant and agree that the purpose for which the Unit may be used is for such uses as may be permitted under the zoning ordinances subject to such limitations as may be contained in the Master Deed and the By-laws of the Unit Owners Association.

The Gillmans, trading as Gillmans Five Star Trash Service, owned and operated a fleet of trash-collecting-trucks. From the date of their purchase of the units, and in the course of operating their business, they have been using these units and the common elements of the condominium as a location on which to repair, clean, and park overnight several of their vehicles. The Gillmans testified that they purchased the condominiums for this express purpose and that this purpose was clearly stated to Pflug, the grantor and declarant in the master deed, as well as to his employee, Roger Thornton. While this testimony was contradicted, it does appear that when the Gillmans purchased the last unit from the Association, Thornton wrote a letter for the Gillmans to sign, requesting a loan from a local bank to finance their purchase, and setting forth in the letter that the intended use of the condominium was for a storage facility for the Gillmans' commercial vehicles and trash receptacles used in their business. Further, to encourage the Gillmans' purchase of the second unit, Pflug accepted a second deed of trust on the unit.

The Gillmans apparently conducted their operations out of their units without incident or complaint until the spring of 1978. Between May 2 and August 10, 1978, they received a series of four letters from the Association complaining about the manner in which they were parking vehicles, of oil and gas leakage from their trucks, and of [292 S.E.2d 381] offensive odors which emanated from the vehicles. They were finally ordered to remove their trucks from the condominium on or before June 12, 1978, or have the trucks physically

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removed by the Association and be subjected to a special assessment for the cost of removal.

On August 10, 1978, the Association, by its attorney, notified the Gillmans that it had imposed a fine on their units based upon their continuing violation of the bylaws, rules, and regulations of the Association. The fines were imposed pursuant to Article III, Section 2(m) of the bylaws, which gives the Board of Managers the power to:

[Levy] fines against Unit owners for violation of the Rules and Regulations established by it to govern the conduct of the Unit owners, provided, however, that no fine may be levied in an amount in excess of $25 for any one violation. But for each day a violation continues after notice, it shall be considered a separate violation.... Where a Unit owner is fined for an infraction of the Rules and Regulations and fails to pay the fine within 10 days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine.

The Board of Managers imposed a fine of $25 against each truck for each day that such truck had allegedly "produced noxious odors on the Common Elements of the Condominium." The fine imposed for five trucks was $125 a day, a total of $8000 for the period June 7 through August 10, 1978. The Gillmans were also advised that if they did not pay the $8000 within ten days, an additional fine of $8000 would be imposed; and further, that the Managers would impose a similar $25 fine for each day that any truck continued to generate an intolerable odor while parked on the common elements.

This action by its counsel was formally ratified at a

special meeting of the Board of Managers held August 31, 1978. At that meeting, counsel explained Virginia's Condominium Act to the Managers, with particular reference to "the right of assessment and the right to lien for failure to pay assessments based on the unit owners pro rata portion of condominium expenses." It was his opinion that the Association had "a sound foundation for assessing against Gillmans' and [recovering] the cost of attorney's fees if we do prevail." However, he advised the Board that "it's a matter of Gillmans' attorney's theory versus our theory of the condominium act." At this meeting, the Board also amended the Association's

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rules and regulations to provide that no unit owner be allowed to maintain on the condominium property more than three trucks per unit with an empty weight of 10,000 pounds or over.

The Gillmans did not pay the $8000 fine within ten days, and the Board levied an additional fine of $8000. Ultimately it levied fines totalling $20,500 on the Gillmans for their alleged violations and filed memoranda of liens in that amount in the Clerk's Office of Fairfax County, pursuant to Code § 55-79.84(a) (1979 Cum.Supp.), which provides, in part:

The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments ....

On November 2, 1978, the Association filed its suit to enforce the liens and enjoin the Gillmans from parking their trucks on the common elements. The next day the Gillmans filed suit for a declaratory judgment.

The condominium is built in a zone that permits the operation of a trash-and-garbage-collection-business such as that conducted by the Gillmans. There is nothing in the master deed, or in the bylaws, which prohibited a sale by Pflug of one or more units for use by a purchaser in conducting such a business, and in using, repairing, and storing vehicles in connection therewith. Purchasers of other units from Pflug were charged with knowledge of the permitted uses.

[292 S.E.2d 382] Although it may have been planned originally that each unit owner would be allocated four parking spaces per unit, this understanding admittedly was not observed by the various unit owners. Prior to August 31, 1978, there were no restrictions or limits on the number of vehicles that each unit owner could own, use, store, or park in the units or on the common elements. The Association fined the Gillmans because their trucks caused an "odoriferous nuisance" in that they "produced noxious odors on the common element of the condominium," which were "offensive and intolerable to the other unit owners."

The Gillmans deny that they operated their business or trucks in the manner alleged by the Association; admit that they have parked their trucks on the common elements of the condominium;

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and claim that they have a vested property right to do so. They testified that the Association had made no objection for more than two years to the manner in which they had operated their business, and emphasize the conveyance to them of a second unit after they had been conducting a garbage-and-trash-collecting-business from their first unit for a full year. They further say their business was being operated in compliance with the zoning laws of Fairfax County and consistent with uses of other unit owners and owners of surrounding properties. At trial, the Gillmans introduced copies of numerous inspection reports made by representatives of Prince William and Fairfax Counties reflecting the cleanliness of the trucks and full compliance with all health regulations.

John T. Summers, an inspector for the Fairfax Health Department, was accepted as an expert witness. He had inspected the Gillmans' operation some twenty-five times. He said the Gillmans had cooperated fully with the Health Department, and he found no violations and observed no significant health hazards. When asked to evaluate the cleaniness of the Gillmans' trucks in comparison to those of other such companies, Summers stated they "were no better nor no worse" than other trash trucks. He testified that on warm humid days he had noted some odor from the trucks, but this was only when one was close to a truck, and even then he found the odor slight.

Four unit owners, members of the Board of Managers, testified that they detected offensive odors emanating from the Gillman trucks. Carl Moorefield said that he could smell "rotten garbage" from the front of his unit even when the Gillman trucks were not on the premises. He also said that the trucks leaked oil and hydraulic fluid and caused damage to the surface of the driveway area. Moorefield admitted that he had seen heavy vehicles, other than those of the Gillmans', on the common elements of the condominium, and that he routinely had ten or eleven employee automobiles associated with his operation parked on the common elements during the day.

Board member William Crawford testified that to his knowledge "at least five trucks were parked [by the Gillmans] on the premises every day." Crawford said the trucks were leaking oil and hydraulic fluid on the parking area and they were often parked and repaired in the driveway area, thereby interfering with other vehicles. He complained of an odor emitted by the trucks

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and said that he had seen maggots on the pavement

which he attributed to the Gillman trucks.

William Rydell, unit owner, operated a retail automobile glass shop. He said that the odor of the Gillman trucks bothered his customers more than it bothered him. He admitted that while the Gillman trucks sometimes leaked oil and hydraulic fluid, his own trucks "leaked some of the same," the difference apparently being one of degree. He said that while the Gillman trucks caused congestion, everyone at the condominium caused congestion to others at some time or another. Rydell regularly used seven or eight trucks in his business.

Pflug testified that he then owned only one unit of the condominium and that it was rented. He said that when the Gillmans' problem was brought to his attention, he visited the condominium and found the odor nauseating. In characterizing the Gillman trucks, he said "they stink."

[292 S.E.2d 383] No condominium shall come into existence in Virginia except on the recordation of condominium instruments pursuant to the provisions of Chapter 4.2 of the Code of Virginia, cited as the Condominium Act. Code § 55-79.39, et seq. The entire condominium concept, and all pertaining to it, is therefore a statutory creation. For a review of the historical background and nature of this method of real estate ownership, Virginia's present Condominium Act, and its predecessor, the Horizontal Property Act, Acts 1962, c. 627, reference is made to Mr. Justice Compton's opinion in *United Masonry v. Jefferson Mews,* 218 Va. 360, 237 S.E.2d 171 (1977).

We consider first the Association's assignment which questions the action of the trial court in setting aside as unlawful the fines levied against the Gillmans. The Association argues that the requirement of the Condominium Act (Code § 55-79.73(a)) that "a set of bylaws providing for the self-government of the condominium by an association of all the unit owners" is designed to foster the evolution of a condominium into "a self-governing community" and a "fully self-governing democracy." It argues that there is no limitation inherent in the Condominium Act on the powers that may be created by the condominium documents, relying upon Code § 55-79.80(c), which provides: "This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ."

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The Association further contends that consistent with "the deference to the condominium documents" that appears throughout the Condominium Act, Virginia Code § 55-79.84 does not limit the lien it permits to assessments levied "in accordance with the provisions of this chapter," but extends the lien also to assessments levied "in accordance with the provisions ... of the condominium instruments." It maintains that since the bylaws of the Association give its Board of Managers the power to levy a fine against a unit owner, and to collect such fine as if it were a common charge, every unit owner purchased subject to this power.

We do not agree that it was ever the intent of the General Assembly of Virginia that the owners of units in a condominium be a completely autonomous body, or that such would be permitted under the federal and state constitutions. Admittedly, the Act is designed to and does permit the exercise of wide powers by an association of unit owners. However, these powers are limited by general law and by the Condominium Act itself. Code § 1-13.17 provides that "[w]hen ... any ... number of persons, are authorized to make ... bylaws, rules, regulations ... it shall be understood that the same must not be inconsistent with the Constitution and laws of the United States or of this State." The Condominium Act also sets limits on the powers that may be created by the condominium documents. All unlawful provisions therein are void. Code § 55-79.52(a). "Common expenses" mean expenditures lawfully made or incurred. Code § 55-79.41(b).

We find no language in the Condominium Act which authorizes the executive or governing body of a condominium to levy fines, impose penalties, or exact forfeitures for violation of bylaws and regulations by unit owners. Code § 55-79.83 provides in detail the various circumstances under which common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any common element shall be assessed. Code § 55-79.84 provides that a unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of the Condominium Act and all lawful provisions of the condominium instrument.

The Condominium Act provides the manner in which an association shall compel compliance with condominium instruments. Code § 55-79.53 reads as follows:

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The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium **[292 S.E.2d 384]** instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action.

The statute does not purport to grant an association the power to secure compliance with its bylaws, rules,

and regulations by the imposition of a fine or the exaction of a penalty. The accepted definition of "fine" is found in Black's Law Dictionary 569 (5th ed. 1979), and is as follows:

To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money.

A pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor. A pecuniary penalty. It may include a forfeiture or penalty recoverable in a civil action, and, in criminal convictions, may be in addition to imprisonment.

The Condominium Act authorizes assessments, not fines. The term "assessment" is in no way synonymous with the word "fine" or the word "penalty." Assessment is defined in Black's, supra, at p. 106, as follows:

In a general sense, the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received. A valuation or a determination as to the value of property....

The imposition of a fine is a governmental power. The sovereign cannot be preempted of this power, and the power cannot be delegated or exercised other than in accordance with the provisions of the Constitutions of the United States and of Virginia. Neither can a fine be imposed disguised as an assessment.

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The controversy here arose over the alleged objectionable manner in which the Gillmans were conducting their business from their privately owned units and on the common elements in which they jointly had an interest with other unit owners. The trucks emitted an offensive odor, as would be expected of trucks that haul garbage and are periodically disinfected. However, the Gillmans were operating a lawful business in a permitted zone and apparently to the satisfaction of the health authorities of two counties. They maintained that they were complying with the law and with the bylaws, rules, and regulations of the Association. Assuming that the Gillman trucks, and their mode of operation, created noxious and offensive odors and amounted to a nuisance, Code § 55-79.53 provided the Association with a remedy to correct the condition and obtain compliance with its bylaws and regulations. Instead of proceeding in that manner and having the rights of the respective parties determined as provided by law, the Board of Managers called a special meeting, the four members who attended decided what they objected to was a "nuisance," fined the Gillmans $20,500, and encumbered their property. The mischief that could be wrought if it were constitutionally permissible for a condominium association to levy fines on and exact penalties of unit owners is dramatically illustrated by this case. Pflug frankly admitted that he regretted selling any units to the Gillmans, and said the sale was "... a bad deal ... the worst one I've ever made" and that the only way to solve the pavement problem was "to get rid of all Gillmans' trucks." Moorefield, another member of the Board "fining" the Gillmans, testified that the imposition of fines better served the purpose of getting the Gillmans out of the condominium since the only way this could be accomplished was to "ruin them." We think it clear that the Gillmans were being punished, not assessed, and hold the action of the Association to have been impermissible.

We now turn our attention to the Gillmans' assignments of error in which they question the action of the Association in amending its rules and regulations. They [292 S.E.2d 385] allege that their purchases of units were made after full disclosure of their intended use to the declarant Pflug, that their use of the property was in accordance with the zoning ordinance and with the understanding they had of permitted uses, and that their continued and alleged reasonable use of the common elements for the repair and parking of their trash collection vehicles was ratified by the Association. They argue

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that their business has been conducted in compliance with "industrial standards" and that to now apply the words "noxious" or "nuisance" to such operation amounts to a retrospective reinterpretation of the condominium documents. They object to the amendment to the rules and regulations attempting to reduce the number of trucks the Gillmans are allowed on the parking area. They regard such amendment as destructive of their alleged vested right to continue to use the same number of spaces as they were permitted to use at the time of their respective purchases. The specific regulation or restriction of which the Gillmans complain is that enacted by the Managers of the Association on August 31, 1978, decreeing that no unit owner be allowed to maintain on the condominium property more than three trucks per unit with an empty weight of 10,000 pounds or over.

The narrow issue is the right of a condominium association to amend its rules, regulations, and bylaws from time to time. As we have heretofore pointed out, the bylaws of the Association recorded with the master deed expressly provide for such amendments. And the master deed conveyed the units to the Gillmans with the express understanding that the rules, regulations, and bylaws of the Association were subject to amendment. The power exercised by the Association is contractual in nature and is the creature of the condominium documents to which all unit owners subjected themselves in purchasing their units. It is a power exercised in accordance with the private concensus of the unit owners. While the unit owners are vested with an undivided interest in the common elements, the authority to control the use of the common elements is vested in the Association by the

condominium documents and such amendments thereof as may thereafter be adopted.

A regulation which restricts the use of parking spaces and the weight of vehicles permitted to occupy such spaces is in no sense a zoning regulation adopted under the police power. Rather, when adopted lawfully and reasonably, it becomes a mutual agreement entered into by the condominium unit owners. A prospective purchaser of a unit is charged with notice of the contents of the master deed and of the bylaws and therefore has the option at the time of purchase to determine whether to sign an agreement and purchase a unit with such a restriction or limitation. It has been universally held that reasonable restrictions concerning use, occupancy, and transfer of condominium units are necessary

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for the operation and protection of the owners in the condominium concept. The necessity for such restrictions on condominium living was aptly explained in Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 181-82 (Fla.Dist.Ct.App.1975). The court adopted a test of reasonableness to determine the validity of association regulations and said:

It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization.... Certainly, the association is not at liberty to adopt arbitrary or capricious rules bearing no relationship to the health, happiness **[292 S.E.2d 386]** and enjoyment of life of the various unit owners. On the contrary, we believe the test is reasonableness. If a rule is reasonable the association can adopt it; if not, it cannot. It is not necessary that conduct be so offensive as to constitute a nuisance in order to justify regulation thereof. Of course, this means that each case must be considered upon the peculiar facts and circumstances thereto appertaining. [*]

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A condominium restriction or limitation, reasonably related to a legitimate purpose, does not inherently violate a fundamental right and may be enforced if it serves a legitimate purpose and is reasonably applied.

While our attention has not been drawn to any Virginia case in point, a number of cases in other jurisdictions have upheld the right of a unit owners' association to add to or change its rules and regulations governing activities within the condominium. See also Code § 55-79.73. In Norman, supra, an association adopted a rule prohibiting the use of alcoholic beverages in certain areas of the common elements. *Ritchey v. Villa Nueva Condominium Ass'n,* 81 Cal.App.3d 688, 146 Cal.Rptr. 695 (1978), approved the prohibition of residents under eighteen years old. In *Ryan v. Baptiste,* 565 S.W.2d 196 (Mo.App.1978), a regulation provided for the installation of locks on common elements to restrict access. And in *Coquina Club v. Mantz, 342 So.2d 112 (Fla.Dist.Ct.App.1977), and Riley v. Stoves,* 22 Ariz.App. 223, 526 P.2d 747 (1974), age restrictions on the occupants of condominiums withstood attack. In Riley, the court found the age restrictions reasonably related to a legitimate purpose and declined to hold that their enforcement violated the defendant's right to equal protection.

In the instant case, there was originally no limitation or restriction on the size, type, or weight of vehicles that could be parked on the common elements of the condominium. However, this fact did not give each unit owner the unfettered and vested right to use the common elements in whatever manner he chose, or to occupy an unlimited number of spaces. The necessity for a regulation governing the number of spaces to which each unit owner is entitled and the weight of vehicles was probably not of importance at a time when all the units were not occupied. But with the sale and occupancy of all units, and with changes in methods of operation, it may become necessary and reasonable for some rules and regulations to be adopted concerning the allocation and use of parking spaces and possibly the weight of vehicles to be parked on the common elements.

It is our conclusion that amendments to condominium restrictions, rules, and regulations should be measured by a standard of reasonableness, and that courts should refuse to enforce regulations that are found to be unreasonable. In doing so, inquiry must be made whether an association has acted within the scope of its authority as defined under the Condominium Act and by its

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own master deed and bylaws, and whether it has abused its discretion by **[292 S.E.2d 387]** promulgating arbitrary and capricious rules and regulations bearing no relation to the purposes of the condominium.

The condominium involved in the instant case is not a residential condominium but one designed for industrial uses. Any rule or regulation adopted by the Association cannot ignore the purposes for which the condominium was created and the intended uses by the purchasers of units in the condominium. Whether a regulation restricting each unit owner to three parking spaces is reasonable depends upon the number of spaces that are available in the parking area, the traffic in and around the condominium, and numerous other factors. In

determining the reasonableness of a weight restriction, the Association would necessarily have to consider, among other things, the type, size, and weight of vehicles normally used in the businesses conducted therefrom by the unit owners, as well as the potential damage such vehicles could do to the common elements. A unit owner could be regulated out of business by an unreasonable and unrealistic weight restriction imposed on his vehicles by other unit owners or their boards of managers.

By the same token, the operator of a business out of a condominium must operate with due regard to the rights of neighboring unit owners and the effect his operation has on the business of others. While some odor from the disinfectant or otherwise will most likely emanate from any garbage truck, nevertheless it is obvious that a trash-collecting-business cannot be operated from a condominium with the same freedom as from an isolated rural area. Because of varying facts and circumstances in each case, the courts have universally adopted the standard of reasonableness in their review of condominium rule making.

In its bill of complaint, the Association sought to permanently enjoin the Gillmans from allowing their garbage trucks on the common elements of the condominium "for any purpose whatsoever." The trial court enjoined the Gillmans from (1) "maintaining, parking, or retaining their trash collecting vehicles on the premises or common areas until the trucks had been washed thoroughly with a disinfectant/insecticide substance designed to reduce odor and kill insects," and (2) "from having, keeping, parking, or maintaining at any given time any vehicles in any Unit or Common Area of ... [the] Condominium in excess of the number permitted by the Rules and Regulations of the Condominium."

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An injunction is an extraordinary remedy. An injunctive order must be specific in its terms, and it must define the exact extent of its operation so that there may be compliance. It should set forth what is enjoined in a clear and certain manner and its meaning should not be left for speculation or conjecture.

We are unable to determine from the record before us the reasonableness of the regulation adopted by the Board of Managers of the Association restricting the number and weight of vehicles that may be parked on the common elements. We cannot tell from any rule or regulation in the record, or from the trial court's order, whether the Gillmans are permitted vehicles in their two units as well as in six parking spaces, or whether their number of vehicles is restricted to a maximum of six under any circumstances. Further, it appears that at the time the regulation was adopted, the Gillmans' business required the use of eleven vehicles, nine having an empty weight of more than 10,000 pounds. It may be impossible for the Gillmans to operate a business if the number and weight of vehicles that they could service, or have available to inspect or service in any one day, were unduly restricted. This must be considered in making any determination of reasonableness and whether the regulation serves a legitimate purpose or is arbitrary and oppressive in its application.

The order of the lower court enjoining the Gillmans from maintaining or parking their vehicles on the premises or common elements until the trucks have been washed thoroughly with a disinfectant/insecticide substance "designed" to reduce odor and kill insects provides no realistic [292 S.E.2d 388] standard for compliance. We cannot conceive of any disinfectant or insecticide, however worthless or ineffective it may be, that is not "designed" to reduce odor or kill insects. How many washings and how often would amount to compliance with the order? And would running a garbage truck through a car-wash be thorough enough? The order would inevitably promote litigation and possibly a contempt proceeding. Further, there has been no finding of fact by the court below that the Gillmans' operation created "the intolerable nuisance" which resulted in "the irreparable loss by the members of the Association of the use and enjoyment of their property," as alleged in the Bill.

We find no merit in the Gillmans' assignment which raises the equitable defense of laches and estoppel against the Association. We do not address the question of the adequacy of attorney's fees, the Gillmans having substantially prevailed. Accordingly, we

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affirm the decree of the court below directing that fines levied on the Gillmans by the Association be set aside and vacated, and the assessment liens released of record. The action of the court below granting the injunctions is reversed, and the injunctions are dissolved. The trial court's allowance of a fee to counsel for the Association is reversed. The case is remanded for further proceedings not inconsistent with the views expressed in this opinion.

Judgment affirmed in part, reversed in part and case remanded.

Notes:

[*] Subsequent to its opinion in Norman, that court took occasion to protest the manner in which the word "reasonable" used in its decision had been interpreted. In Hidden Harbour Estates, Inc. v. Basso, 393 So.2d 637, 639-40 (Fla.Dist.Ct.App.1981), the court pointed out that there are essentially two categories of cases in which a condominium association attempts to enforce rules of restrictive uses. It said that in the first category dealing with restrictions found in the declaration of condominium itself, "the restrictions are clothed with a very strong

presumption of validity which arises from the fact that each individual unit owner purchases his unit knowing of and accepting the restrictions to be imposed...." It held that "[s]uch restrictions are very much in the nature of covenants running with the land and they will not be invalidated absent a showing that they are wholly arbitrary in their application, in violation of public policy, or that they abrogate some fundamental constitutional right...." Continuing, it held that in the second category of cases, "where a use restriction is not mandated by the declaration of condominium per se, but is instead created by the board of directors of the condominium association, the rule of reasonableness comes into vogue. The requirement of 'reasonableness' in these instances is designed to somewhat fetter the discretion of the board of directors...."

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178 N.Y.S.2d 895

15 Misc.2d 491

VERNON MANOR CO-OPERATIVE APARTMENTS, SECTION I,

Incorporated, Plaintiff,

v.

Alfred A. SALATINO, Meyer Gwertzman and Irving Kreppel, Defendants.

Supreme Court of New York, Westchester County Court.

July 8, 1958.

[15 Misc.2d 492]

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Sam Eisenberg, Mount Vernon, for plaintiff.

Alfred A. Salatino, Mount Vernon, for defendant Salatino.

Jacob Nagelberg, New York City, for defendant Gwertzman.

Irving I. Kreppel, New York City, for defendant Kreppel.

JAMES D. HOPKINS, Judge.

This action brought by a cooperative housing corporation against three of its stockholder-members who are tenants in an apartment house owned by the plaintiff was tried without a jury on a stipulation of facts. The action seeks to recover charges imposed by the plaintiff's board of directors for the maintenance of a washing machine within the dwelling unit occupied by each of the defendants, together with a 'late' charge prescribed by resolution of the board of directors for failure by the defendants to pay the maintenance charge for the washing machines.

The plaintiff is a corporation organized under the Cooperative Corporations Law. Each of the defendants entered into an occupancy agreement with the plaintiff at the time he became a stockholder-member of the plaintiff and a tenant in plaintiff's apartment house. That occupancy agreement provided, among other things, that each defendant had purchased certain stock of the plaintiff for a consideration, and that 'subject to the provisions of this Agreement, and of the By-Laws, and in consideration of the purchase price hereinabove set forth * * *', the plaintiff leased to the defendant 'a right of occupancy' of a certain dwelling unit. The occupancy agreement further provided that 'the right of occupancy * * * is delivered subject [15 Misc.2d 493] to the terms and conditions hereinafter set forth, to the Certificate of Incorporation and the By-Laws of the Corporation, and any rules and regulations promulgated by the Corporation * * *'. It was agreed that the member might occupy the dwelling unit as a private dwelling and enjoy its use 'so long as he continues to own all the shares of the common stock of the common stock issued to him, occupies the dwelling and abides by the terms of this Agreement'. The plaintiff agreed to provide necessary management, operation and administration of the project; the defendants agreed to replace all appliances and fixtures, and not to make any structural alteration or in water or plumbing or other fixtures or replacements without the written consent of the plaintiff. The plaintiff is given the right to terminate the agreement in the event of certain happenings, one of which is the default by the defendants of the performance of any covenant or provisions of the occupancy agreement, or of the payment of any sum due to the plaintiff, and the plaintiff may institute summary proceedings to repossess the dwelling unit upon such termination of the agreement. Lastly, the defendants covenanted to 'preserve and promote the mutual ownership principles on which the Corporation has been founded, abide by the Certificate of Incorporation, By-Laws, rules and regulations of the Corporation, and by his acts of corporation

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with its other members bring about for himself and his co-members a high standard in home and community conditions,' and by still another provision, that 'he will abide by all the provisions of said Certificate of Incorporation, By-Laws, rules and regulations and any amendments thereto'.

The occupancy agreement made no reference to the use of a washing machine, as such, by the defendants. However, when the defendants moved into their respective apartments in early 1952, each installed a washing machine after having received oral permission, and each has continued to make use of his washing machine; in the case of the defendant Gwertzman a payment of $40 was made to the plaintiff for certain alterations in his apartment to accommodate the washing machine.

In early 1955 the plaintiff adopted a regulation prohibiting future installations of washing machines in any apartment. Later, in May, 1955, the plaintiff adopted

a regulation imposing a $2 monthly charge for the use of washing machines proviously installed. Prior to this time, in March, 1955, the board of directors of plaintiff adopted a resolution imposing a late charge of $2 for each month that a member might be in default in payment of any sum due to the plaintiff. The defendants have not paid the monthly maintenance charge, claiming that it and the

[15 Misc.2d 494] 'late' charge are unreasonable and may not be applied against them by reason of their vested rights acquired prior to the adoption of the plaintiff's regulations with respect to the use of washing machines.

This action, based on the construction of the relative rights and liabilities of a cooperative housing corporation and its members, has little precedent in this state. Sparse are the cases treating of the relationship between such a corporation and its members-tenants; an inquiry must therefore be directed toward the statutory provisions authorizing the organization of the plaintiff, and such analogies as are apposite in the law of cognate corporate structures, such as stock and membership corporations, and benevolent orders.

The Cooperative Corporations Law was extensively revised in 1951 (Laws of 1951, ch. 712). A cooperative corporation is defined to be a corporation 'for the cooperative rendering of mutual help and service', and 'classed as a non-profit corporation, since its primary object is not to make profits for itself as such, or to pay dividends on invested capital, but to provide service and means whereby its members may have the economic advantage of cooperative action, including a reasonable and fair return for their product and service' (sec. 3(c, d), Cooperative Corporations Law). It is empowered to state in its certificate of incorporation, by-laws or member contracts the obligations and relative rights of its members, to make general rules as to the property of the Corporation, and to adopt and amend by-laws, 'consistent with law', relative to such subjects, and the 'fixing of procedures and liabilities in case of violations of the by-laws or of the obligations of members, officers or directors'

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(sec. 14(h, i)). The by-laws may be amended by the board of directors, subject disaffirmance by the members (sec. 16).

The relationship between the plaintiff and the defendants, including their obligations toward one another, is embodied in the certificate of incorporation, the by-laws the rules and regulations, and the member contracts, not only by the express provisions of the occupancy agreement, but also by operation of law (Cabana v. Holstein-Friesian Association of America, 196 App.Div. 842, 847, 188 N.Y.S. 277, 280; Thompson v. Wyandanch Club, 70 Misc. 299, 127 N.Y.S. 195; Stein v. Marks, 44 Misc. 140, 89 N.Y.S. 921), provided that the laws of the state are not thereby infringed (Kent v. Quicksilver Mining Co., 78 N.Y. 159). Indeed, the statute itself stipulates that the power to make by-laws must be exercised 'consistent with law' (sec. 14(i), Cooperative Corporations Law), which has been construed in relation to other statutes governing corporate [15 Misc.2d 495] management to mean decisional law as well as statute law (Raub v. Gerken, 127 App.Div. 42, 44, 111 N.Y.S. 319, 320; cf. Kent v. Quicksilver Mining Co., 78 N.Y. 159, 182, supra).

Thus, it has been said that by-laws of a corporation must be reasonable and fair (Matter of Flushing Hospital & Dispensary, Sup., 27 N.Y.S.2d 207, affirmed 262 App.Div. 749, 28 N.Y.S.2d 207, modified on other grounds 288 N.Y. 125, 41 N.E.2d 917; Stein v. Marks, 44 Misc. 140, 89 N.Y.S. 921, supra), and it has been held in a classic case that a by-law which disturbs a vested right is ipso facto not reasonable, even though the power to change the by-laws has been reserved (Kent v. Quicksilver Mining Co., 78 N.Y. 159, 183, supra); see Packel, The Law of Cooperatives, Albany, New York, 1940, 65. The defendants concede that the regulation prohibiting the prospective use of washing machines is reasonable, and our courts have recently held that it is reasonable to impose charge on the ue of a wahing machine in a cooperatively owned apartment (Forest Park Cooperative, Inc., v. Hellman, 2 Misc.2d 183, 152 N.Y.S.2d 685; Hilltop Village Cooperative, Inc., v. Wolman, Sup., 178 N.Y.S.2d 498, Rabin J.). In these cases, however, it appeared that the defendants had known of the regulation before taking occupancy.

The determination here, therefore, rests on whether the defendants had a vested right to the use of their washing machines which a subsequently adopted regulation could not disturb. The business judgment of the board of directors is not challenged, and it will be assumed that its action was taken with a due regard for the interests of the corporation and its members, as was its duty (Matter of Flushing Hospital & Dispensary, 288 N.Y. 125, 132, 41 N.E.2d 917, 919, supra). The relation between the plaintiff and its members is fiduciary in nature (Rhodes v. Little Falls Dairy Co., Inc., 230 App.Div. 571, 245 N.Y.S. 432, affirmed 256 N.Y. 559, 177 N.E. 140; 43 C.S.S. Industrial Cooperative Societies sec. 7, p. 14 et seq.), and the board of directors were bound, on

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one hand, to manage the affairs of the plaintiff so as to carry out its purposes to house its members in a comfortable and efficient manner, and on the other hand, to treat its individual members in a fair and equal way. The defendants, too, had the correlative duty to recognize that the cooperative enterprise must be conducted with the objective of securing the greatest good for the benefit of the membership. Undoubtedly, the use of washing machines in apartments would have the tendency to consume greater quantities of water, to affect the

plumbing fixtures in the building, and to create noise and vibration which might annoy adjoining tenants. These considerations might have been the motivation for the decision of the board of directors in prohibiting further use of washing machines, and laying a charge for their continued use. On the ground alone, accordingly, that no vested [15 Misc.2d 496] right could have been acquired by the defendants for the use of such an appliance in an apartment house owned and occupied cooperatively, and where the rights of enjoyment by tenant-members must be exercised in the light of mutual benefit and understanding, the determination that the charge of $2 monthly might validly be made for the continued use of washing machines could be placed. Certainly, it is implicit from the law, the occupancy agreement, and the relations of the parties that a spirit of cooperative was the keynote of the defendants' tenancies, which they enjoyed in common with their neighbors, subject to rules applying to all.

In addition, however, it is my opinion that a permission to install a washing machine, as here stipulated, does not give rise to a vested right. Even a landlord under a conventional lease arrangement may enforce reasonable regulations for use of the premises (Dougherty v. Rockaway Operation Co., Inc., 163 Misc. 806, 810, 298 N.Y.S. 242, 246), and it has been pointed out that a regulation does not have the effect of a by-law--a regulation deals with problems relating to management of the property of the corporation, while a by-law deals with matters of corporate structure and machinery (Pachel, Law of Corporations, 59, supra, citing Sea Gate Ass'n v. Sea Gate Tenants Ass'n, 168 Misc. 742, 6 N.Y.S.2d 387). Generally speaking, a vested right is a property interest so substantial in character that its destruction or deprivation cannot be justified by the objectives in view (People v. Miller, 304 N.Y. 105, 108, 106 N.E.2d 34, 35). No vested right may be built on a permission granted, just as no vested right is established under the enjoyment of a rule of law (Christie v. 46th St. Theatre Corporation, 265 App.Div. 255, 39 N.Y.S.2d 454, affirmed 292 N.Y. 520, 54 N.E.2d 206, certiorari denied 323 U.S. 710, 65 S.Ct. 35, 89 L.Ed. 571). The permission thus granted could be revised at any time. The conclusion that a vested right did not arise is reinforced by a consideration of the cases in which it was held that the by-law involved could not invade the prior right of a stockholder. These cases concern either property rights in stock as in Kent v. Quicksilver Mining Co., 78 N.Y. 159, supra, or the

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manner of voting stock as in Matter of American Fiber Chair Seat Corp., 241 App.Div. 532, 272 N.Y.S. 206, affirmed 265 N.Y. 416, 193 N.E. 253, or rights under policies issued by the corporation, as in Rockwell v. Knights Templar & Masonic Mutual Aid Association, 134 App.Div. 736, 119 N.Y.S. 515, or a change in the manner of terminating property rights as in Tompkins v. Hale, 172 Misc. 1071, 15 N.Y.S.2d 854, affirmed 259 App.Div. 860, 20 N.Y.S.2d 398; 284 N.Y. 675, 30 N.E.2d 721. In no case was the vested right constituted of less than a substantial property right based on a contract.

The monthly charge of $2 for the washing machines may therefore be enforced against the defendants. I do not reach [15 Misc.2d 497] the same conclusion concerning the late charge of $2. In the first instance, a corporation cannot impose an assessment or fine for a violation of its by-laws (Monroe Dairy Association v. Webb, 40 App.Div. 49, 57 N.Y.S. 572; Merchants' Ladies Garment Association v. Coat House or William M. Schwartz, 152 Misc. 130, 273 N.Y.S. 317), unless it is expressly authorized by statute (Johnstown Cemetery Association v. Parker, 45 App.Div. 55, 60 N.Y.S. 1015). A cooperative corporation may be direct statutory sanction fix a liability for a violation of a by-law (sec. 14(i), Cooperative Corporations Law). But such a by-law must be reasonable (Monroe Dairy Association v. Webb, supra; Thompson v. Wyandanch Club, 70 Misc. 299, 127 N.Y.S. 195, supra). A charge equal to 100% of the payment in default cannot be sustained as a reasonable amount in proportion to the cost or other loss which might be incurred by the default or the process of collection; it is rather confiscatory in character, and may not be enforced. It is doubtful, too, whether the board of directors intended the late charge to apply to non-payment of the maintenance charge for the use of washing machines, since the resolution of the board as to the former antedates the regulation requiring payment of the latter. It is noted that the defendants owe no other sum to the plaintiff save the maintenance charges which they contested in this action.

One defense raised by the defendant Salatino remains to be considered. It is his claim that this action is barred by a prior adjudication in a summary proceeding brought by the plaintiff in the City Court of Mount Vernon, whereby the proceeding was dismissed.

That proceeding was decided without an opinion as to the reasons for the dismissal in favor of the defendant. A summary proceeding is statutory in its origin, and seeks primarily the possession of leased premises; here the plaintiff seeks recovery of a debt ex contractu. A final order in a summary proceeding does not necessarily decide the amount of rent due (Marx v. Commerce Realty Corp., 199 Misc. 384, 101 N.Y.S.2d 370; Witt-Stuart Realty Corp. v. Mantell, 155 Misc. 165, 279 N.Y.S. 802); that relief is incidental to the question of possession. The prior proceeding is accordingly dissimilar to the present action, and

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it is the well established principle that when the actions are not identical as to their nature or objectives, a prior adjudication as to one does not act as an estoppel to the second, even though the parties are identical (Schuylkill

Fuel Corp. v. B. & C. Nieberg Realty Corp., 250 N.Y. 304, 306-307, 165 N.E. 456, 457; Cook v. Conners, 215 N.Y. 175, 178, 109 N.E. 78, L.R.A.1916A, 1074; Lord v. Sonsire, 239 App.Div. 323, 267 N.Y.S. 367). It is conclusive only as to the point finally decided, that is, that the defendants could not be ousted by summary proceedings from their dwelling units for their failure to pay the maintenance charge. As Judge Cardozo [15 Misc.2d 498] said in Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp., supra, 250 N.Y. at page 308, 165 N.E. at page 458: 'The decisive test is this, whether the substance of the rights or interests established in the first action will be destroyed or impaired by the prosecution of the second'. It is clear that, regardless of the result of this action, the defendants will continue to reside under their agreement with the plaintiff in the dwelling unit described therein, and that this action determines only a personal liability for a maintenance charge so long as the defendants continue to use their washing machines. The defense of res adjudicata is therefore not a bar to the present action.

Judgment is therefore directed in favor of the plaintiff, limited to the recovery of the maintenance charges set forth in the complaint. This opinion may be considered the decision of the court under section 440 of the Civil Practice Act.

FINKEL
LAW FIRM LLC

Charles A. Krawczyk, Esquire
ckrawczyk@finkellaw.com

April 9, 2012

NOTICE OF RIGHT TO CURE

THIS IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND REGULAR MAIL

Coley Brown
6436 Westshore Dr.
Columbia SC. 29206

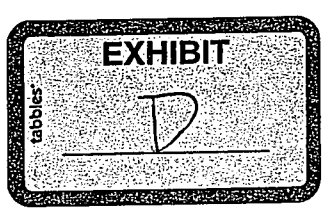
RE:	**YOUR ACCOUNT:**	Spring Valley Homeowners Assoc.
	AMOUNT DUE:	$500.00
	PAY BEFORE:	May, 9 2012

Dear Mr. Brown:

As legal counsel for Spring Valley Homeowners Association., (the "Creditor"), we hereby serve you with notice that you are in breach of the terms of the governing documents of the Spring Valley homeowners association which are legally binding upon you pursuant to your deed, and under which you have an ongoing legal obligation to pay general and certain special assessments, as well as any applicable fees, fines, and service charges on outstanding amounts.

To cure the breach, it will be necessary for you to promptly forward full payment of your outstanding balance to this law office in the amount of $500 which includes payments and/or fees that are due and owing.

If you do not pay $ 500 by Wednesday, May 9 2012, the Creditor may exercise its rights under the law and the governing documents. These rights include, without limitation, the



COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax; (803) 252-0786

CHARLESTON
Litigation, Real Estate & REO
3955 Faber Place Drive, Suite 200
Post Office Box 225 (29402)
North Charleston, SC 29405
Tel: (843) 577-5460

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460

right of the Creditor to invoke its power under the Contract to demand that it be paid immediately, and the right to foreclose on the subject property.

You have the right to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

If the funds are not received on or Wednesday May 9, 2012, the Creditor may declare the secured sum immediately due and payable without further demand and may institute legal action in connection with its rights and remedies available to it under the Contract and South Carolina law. In such legal proceedings, the Creditor shall be entitled to collect all expenses incurred thereby, including, but not limited to, reasonable attorney's fees of the unpaid debt and costs, all of which shall be additional sums secured by the loan instruments in accordance with applicable law. The loan instruments and South Carolina law may provide other rights and obligations of yours and the Creditor which are not hereby raised or released.

If you have any questions, write or telephone the Creditor or my office immediately.

PLEASE FIND ATTACHED THE NOTICE REQUIRED BY THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT. THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT, AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

With kind person regards, we are

Yours very truly,

FINKEL LAW FIRM LLC

Charles Krawczyk

cc: Board of Directors, Spring Valley Homeowners Association

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. SECTION 1601, AS AMENDED

1. The amount of the debt is $500

2. The Creditor is: Spring Valley Homeowners Association
c/o Beth Swindler
PO Box 25246
Columbia, SC 29224

3. The debt described in the letter attached hereto will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days, dispute the validity of the debt or some portion thereon.

4. If you, the Debtor, notify the Creditor's law firm thirty (30) days that the debt of any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.

5. Communications to Creditor's attorney should be sent to:

Charles Krawczyk, Esquire
Finkel Law Firm LLC
Post Office Box 1799
Charleston, South Carolina 29202

6. This notice should not be construed as providing any grace period.

THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn B. Beighley
* Mediator/Arbitrator

P.O. Box 50143
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

May 3, 2012

VIA FACSIMILE TO (803) 252-0786
& U.S. MAIL
Charles A. Krawczyk, Esq.
Finkel Law Firm, LLC
P.O. Box 1799
Columbia, SC 29202

Re: My client: S. Coley Brown
Your client: Spring Valley Homeowners Association
Your letter to Mr. Brown of April 9, 2012

Dear Charles:

As Harry Goldberg of your firm already knows, I represent Mr. S. Coley Brown. I write to inform you that my client disputes the validity of the debt referenced in your letter and requests that verification of that debt be mailed to me as his attorney.

Thank you for your attention. I look forward to hearing from you.

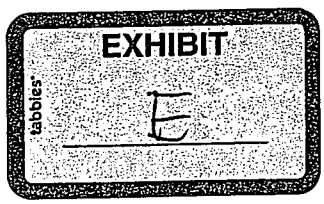
With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/

cc: Mr. S. Coley Brown



LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 779-2211
(803) 779-6700 (FAX)

Attorneys at Law
Mediation/Arbitration

P.O. Box 50143
Columbia, SC 29250

FACSIMILE TRANSMITTAL SHEET

TO: Charles Krawczyk, Esq.	FAX NO: (803) 252-0786
COMPANY: Finkel Law Firm, LLC	DATE: 5/3/12
FROM: Kevin Fain	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: S. Coley Brown Spring Valley Homeowners Association	CASE NUMBER:

☐ URGENT FOR REVIEW ☐ PLEASE COMMENT PLEASE REPLY ☐ PLEASE RECYCLE

The information contained in this facsimile message is attorney privileged and confidential information intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank You.

NOTES/COMMENTS:

* * * Communication Result Report (May. 3. 2012 11:41AM) * * *

1)
2)

Date/Time: May. 3. 2012 11:41AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
4158	Memory TX	2520786	P. 2	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 779-2211
(803) 779-6700 (FAX)

Attorneys at Law
Mediation/Arbitration

P.O. Box 50143
Columbia, SC 29250

FACSIMILE TRANSMITTAL SHEET

TO: Charles Krawczyk, Esq.	FAX NO: (803)252-0786
COMPANY: Finkel Law Firm, LLC	DATE: 5/3/12
FROM: Kevin Fain	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: S. Coley Brown	CASE NUMBER:

Spring Valley Homeowners Association

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

The information contained in this facsimile message is attorney privileged and confidential information intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank You.

NOTES/COMMENTS:

FINKEL
LAW FIRM LLC

September 18, 2012

Reply to:
Columbia Office

Leigh Albers
Legal Assistant

Andrew S. Radeker, Esquire
Harrison & Radeker, P.A.
923 Calhoun Street
Columbia, South Carolina 29201

RE: Your Client: S. Coley Brown
Our Client: Spring Valley Homeowners Association
Our File No. 69650-44112

Dear Mr. Radeker:

Enclosed please find a copy of the Notice and Certificate of Lien for Homeowners Fees which was filed on September 13, 2012 in Book 1796 at Page 73. If you have any questions, please do not hesitate to call.

Sincerely,

Leigh Albers

Leigh Albers
Legal Assistant

/la
Encl.
cc: S. Coley Brown

RECEIVED SEP 19 2012

EXHIBIT
tabbies
F

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

CHARLESTON
Litigation, Real Estate & REO
4000 Faber Place Drive, Suite 450
Post Office Box 41489 (29423)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
Foreclosure
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-00[illegible]

Book 1796-73
2012075401 09/13/2012 15:59:14:373 Unpaid Assesment Lien
Fee:$5.00 County Tax: $0.00 State Tax: $0.00

2012075401 John T. Hopkins II Richland County R.O.D.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Spring Valley Homeowners Association, Inc.,)
)
Plaintiff,)
)
v.)
)
S. Coley Brown and Annette Carlson)
)
Defendants)

NOTICE AND CERTIFICATE OF LIEN FOR HOMEOWNERS' FEES,

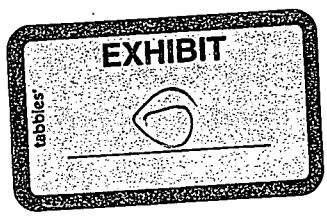
NOTICE IS HEREBY GIVEN that Spring Valley Homeowners Association, Inc., a South Carolina Corporation, is due the principal sum of Five Hundred dollars ($500.00), as of December8, 2011, plus interest, costs and attorneys' fees and such other and further assessments, and late fees accruing after said date from the property owner and co-owners S. Coley Brown and Annette Carlson.

That by virtue thereof, by the service and filing of this Notice and Certificate of Lien, Spring Valley Homeowners Association, Inc. has and claims a lien to secure the payment of the obligations due and owing, plus costs, interest, late fees, and other expenses accruing after December 8, 2011, on the property described as follows:

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as Lot Number Nine (9), Block "D" upon a plat of portion of Spring Valley, made by William Wingfield, dated August 29, 1962, revised July 10, 1973 and recorded in the Office of the ROD for Richland County in Plat Book "X", page 9550 and 9550-A; and also being shown and delineated on a plat prepared for Elham Farzam and Afsaneh Z. Farzam by Polson Surveying Co., dated July 28, 1989 and recorded on August 15, 1989 in the Office of the ROD for Richland County in Plat Book 52, page 7176. Said latter plat is specifically incorporated herein and reference is craved thereto for a more complete and accurate description of the premises. Be all measurements a little more or less.
This being the same property conveyed to Coley Brown by deed of Afsaneh Z. Farzam, dated August 31, 2007 and recorded on September 4, 2007 in the Office of the ROD for Richland County in Record Book 1354, page 253, and to Annette Carlson by deed of Coley Brown, dated September 29, 2009 and recorded on October 1, 2009 in the Office of the ROD for Richland County in Record Book 1559, page 2067

TMS# 20005-01-23

118 Spring Valley Road
Columbia, SC 29223



IN WITNESS WHEREOF, SPRING VALLEY HOMEOWNERS ASSOCIATION, INC. has hereunto set its Hand and Seal, by its undersigned officer, this 22 day of August, 2012.

Witness _____ By: _____

Witness: _____ Spring Valley Homeowners Association, Inc.

NOTICE AND CERTIFICATE OF LIEN FOR
HOMEOWNERS' FEES,

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Personally appeared before me, the undersigned witness, and made oath that (s)he saw the within named Spring Valley Homeowners Association, by and through its authorized agent, Rodney Spivey., sign, seal and as its act and deed, deliver the within instrument, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Constance Brown (1st Witness)

Sworn to before me this
22 day of Aug, 2012

Alise L Moss
Notary for the State of South Carolina
My Commission Expires: 4-24-2016

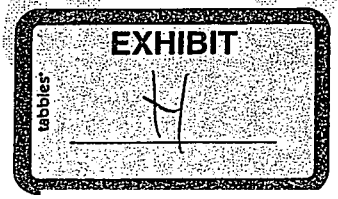
ALISE L. MOSS
NOTARY PUBLIC
SOUTH CAROLINA
My Commission Expires April 24, 2016

Information Guide

Deed Restrictions & Covenants

Spring Valley Homeowners Association

January, 2011



We are delighted to have you as part of our community. As a property owner you are automatically a member of the Spring Valley Homeowner's Association. The Association is managed by an all volunteer Board and is ready to assist you within reasonable limits.

The strength of our community is a common desire to keep a pleasant and safe neighborhood, neat landscapes, clean streets and stable property values. We need your help to accomplish these objectives. This informational guide will give you answers to many of the questions you may have regarding your rights and responsibilities as a Spring Valley Homeowner. If you have further questions or require clarification, please contact the Association Manager or a member of our volunteer Board of Directors.

Section I. *History and Deed Restrictions*	*Page 1*
Section II. *Security and Safety*	*Page 7*
Section III. *By-Laws*	*Page 10*
Section IV. *Rules and Regulations*	*Page 22*
Section V. *Questions and Answers*	*Page 26*
Street References	*Page 33*
Map of Spring Valley	*Back Cover*

1

History

Spring Valley Subdivision and Spring Valley Country Club were developed by Mr. Edwin Cooper through Pine Springs Inc. in the early 1960's. Mr. Michael J. Mungo, through Spring Valley Associates, developed tracks known as Flora Tract I & II beginning in 1976. Later, Spring Valley was expanded by extending East Springs Road (Section 12) and West Springs Road (Section 16). Old Spring Valley expanded with the addition of patio homes (Section 14); Sweet Gum (Section 15); Camberely Court, Enlow Court, Briarberry Road, and Wild Cherry Road Section 10). In 1976 the Spring Valley Homeowners Association was established by the residents. The residents accepted title to the roads, lakes, dams, spillways, parks, and common areas. This transfer gave the Spring Valley Homeowners Association the exclusive right to assess property owners in Spring Valley for the cost maintenance and security.

Three of the early residents who provided leadership and long-term support to the Spring Valley Homeowners Association are recognized by bronze plaques in the Honor Garden near the main entrance. They are Major General Roger K. Rhodarmer who was the founding President and advisor to the Board of Directors until his death in 2001, Mrs. Roberta Dunn who was a founding director and the Administrative Manager until her death in 1999, and Colonel John O. Scullion, a founding director, who later maintained the common areas until shortly before his death in 1998.

2

Assessments

The indenture entered into between Pine Springs, Inc. and the Spring Valley Homeowners Association and between the Spring Valley Associates and the Spring Valley Homeowners Association assigns to the Spring Valley Homeowners Association the exclusive right to assess and collect from the property owners in Spring Valley charges for maintenance, repairs and security. These charges cover road and common area maintenance, security services and administrative costs. Bills are sent quarterly and are due on the first day of the quarter. Finance charges on past due accounts will be added as indicated on statement.

Deed Restrictions

You should have received the Indenture when you received the deed to your property. The Indenture imposes certain restrictions on the use of your property. You should read these deed restrictions carefully. They have a solid legal foundation in South Carolina. On August 17, 1977 the South Carolina Supreme Court ruled that deed restrictions are property and their violation is damage to property, thus making the violator subject to payment for damages incurred. Avoid this by adhering closely to your deed restrictions, thereby avoiding damage to your neighbors' properties and helping to maintain property values.

The following paragraphs are quotes of restrictions in Spring Valley from various deeds:

(a) By acceptance of this deed, the GRANTEE covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association, hereinafter referred to as SVHA, and will abide by its duly enacted rules, regulations and by-laws, and the GRANTEE will pay to SVHA the periodic assessment due SVHA for the purpose of maintenance of the streets, roads, storm drains, common properties of SVHA, security services and other items determined by the by-laws of SVHA as duly adopted from time to time, a current copy of which shall be furnished upon request. GRANTEE agrees that such periodic assessments shall constitute a lien upon the property, subject and junior to the rights of all first mortgages, to the rights of the holder of any mortgage securing a purchase money obligation for the purchase of or an interest in any improved or unimproved lot to which such assessment related, and to the rights of the holder of any mortgage securing an obligation incurred in connection with the installation or construction of permanent improvements upon the lot to which such assessment relates, as well as personal obligation of GRANTEE and every succeeding owner.

3

Deed Restrictions (cont.)

(b) No structure shall be erected on this lot other than one single family dwelling and detached or attached garage of similar design, including servants' quarters, if desired; and no use shall be made of the property, or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family.

(c) No lot referred to herein shall be subdivided or reduced in size without the written consent of the GRANTOR.

(d) No noxious or offensive activity shall be carried on upon this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No hogs, goats, poultry, cows, or horses which shall constitute a nuisance or cause unsanitary conditions, or any undesirable situation to any neighboring property, shall be maintained on this lot; and nothing shall be done, or any condition permitted on said lot which shall pollute the water of any lake, stream or pond in or near Spring Valley Estates.

(e) No temporary structure or garage apartment shall be erected upon the lot.

(f) An easement is reserved unto the GRANTOR herein over five feet along each side line of each lot and over the front five feet and rear ten feet of each lot for the utility installations, utility rights-of-way and maintenance thereof, as well as drainage installations, drainage rights-of-way and maintenance thereof.

(g) All sewage disposal shall be through the sewer lines and plant to be provided by the developers or the East Richland County Public Service District, and no septic tanks shall be permitted except by separate agreement of the seller and approval of the Department of Health and Environmental Control.

(h) No building, fence, or other structure of any kind shall be erected, placed or altered on the lot hereby conveyed until the building plans, specifications, design and plot plan showing the location of the building, fence, or structure on this lot have been approved by the GRANTOR herein, in writing, as to conformity in size, type and quality, and as to harmony of design with existing structure with respect to topography and finished ground elevation.

Deed Restrictions (cont.)

(i) If the lot hereinabove described borders a pond or lake, then the GRANTEES use of the pond or lake shall be limited strictly to such purposes as may be authorized in writing by the grantor, and in the event of any damage to the dams after the year, 1965, the cost of repairs shall be borne by the bordering property owners on a pro-rate front foot basis. The use of motor boats on any of the lakes or ponds is to be prohibited unless authorized by the GRANTOR, the Spring Valley Country Club and a majority of the property owners owning property on the lake or pond.

(j) It is understood and agreed between the parties hereto that the hereinabove described property is sold as is and GRANTOR shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of streets after said streets have been dedicated to the county.

(k) Except as specifically provided for in this paragraph no "Sale" or "Rent" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:

1. Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon, not more than one (1) "For Sale" sign (the size and contents of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.

2. After the first sale of a lot with a dwelling thereon, no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by SVHA, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.

3. No sign shall ever be nailed or fastened to any tree at any time.

(l) No clothes lines, exposed garbage containers or other unsightly objects are to be erected or used on the property except where they are screened from the streets, lakes, adjoining properties or general view.

(m) No camper trailers, travel trailers, trucks, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles or commercial equipment of any kind are to be garaged or stored on the lots.

5

Deed Restrictions (cont.)

(n) The lot herein described adjoins a proposed golf fairway including tee and green designated as fairway number ___. It is agreed that such fairway may become a part of the Spring Valley Country Club's golfing facility under an agreement between Pine Springs, Inc. and Spring Valley Country Club, and in such event, the property so designed will be conveyed to Spring Valley Country Club for exclusive use of its members and guests as a part of the club's golfing facilities. Until such property is conveyed to the Club, it will be held by the GRANTOR as open space for the exclusive use of GRANTOR and the owners of adjoining lots, subject to such restrictions as grantor may impose to prevent littering, abuse, trespassing, unleashed animals, or motor vehicles of any kind, or other activities which may be an annoyance or nuisance to any of the adjoining property owners. No building, playgrounds or picnic facilities or other structures shall be constructed on the property and no other use shall be made thereof unless agreed, in writing, by GRANTOR herein and the owners of a majority of the lots adjoining such property. In any event, GRANTOR agrees to maintain the property as open space for a period of fifteen (15) years from December 1, 1969, or until Spring Valley Club elects to construct the golf course, whichever occurs first.

The following paragraph relating to Block Park was not numbered in the deed. The lake referred to is Park Shore Lake.

(o) The lake front property owners, together with their immediate families and house guests, are to have the privilege of using the entire lake for swimming, boating and fishing, subject to rules, regulations and prohibitions approved by a majority of the owners of the property bordering on the lake, including the medians and walkways leading to the park.

If your property lies in Block Park or Block I, your attention is called to Paragraph (o) which grants special privileges to these lot owners. There are 101 lots in Block Park and the nine (9) lots in Block I which makes a total of 110 lots, the owners of which have the special privileges regarding the use of Park Shore Lake, the recreation park and the walkway between Park Shore Drive West and Park Shore Drive East.

Paragraph (i) states that lake front property owners have responsibility for their dam. Four of the dams (Entrance Lake, Clark Lake and the dams at North Lake Road) are Class A according to the Army Corp of Engineers. If a Class A dam suffered a cataclysmic failure there probably would be loss of life as well as property damage.

Deed Restrictions (cont.)

The other dams are Class B, i.e., there would be only extensive property damage in the event of a cataclysmic dam failure. Therefore, all owners of property bordering any lake should be aware of Paragraph (i) under the Deed Restrictions, and their potential responsibilities in the unlikely event of a cataclysmic dam failure. Likewise, for similar reasons, the owners of the 110 lots in Block Park and Block I, not bordering on Park Shore Lake should be aware of the stipulations in Paragraphs (i) and (o).

There are 100 lots that border on the proposed golf course. If your property borders on one of the two (2) areas held as a proposed nine hole golf course, your attention is called to Paragraph (n).

Note: As stated, one of these areas comprising 27.5 acres lying west of Block Park was developed because the option to construct 3 holes of golf on it has expired. The area which would accommodate the other 6 holes surrounds Blocks V and W in Old Spring Valley. It has been determined that the property which would have accommodated the 6 additional golf holes will not be developed as a golf course. Ownership of this property has reverted to Pine Springs, Inc. who has proposed a plan to utilize this property by subdividing part of it to be sold as 6 new building lots plus 9.34 acres on Brickyard Road to be developed outside of Spring Valley at a later date. The remainder to be divided into approximately 73 parcels and sold to present property owners whose property is contiguous to it. This plan has been approved and implemented.

The proposed golf course lots referred to in paragraph (n) above no longer exist. The acreage west of Block Park was developed by Pine Springs as Sweetgum Road. The acreage surrounding the proposed golf course in Blocks V and W was developed by Pine Springs into residential lots and individual parcels that were offered for sale to the adjoining property owners. Those adjoining parcels that have not been sold within ten (10) years (from 1993) will be conveyed by Pines Springs, Inc. to the Spring Valley Homeowners Association as common grounds.

Section II Security and Safety

7

Security and Safety

In order to maintain the residential quality and tranquility of the Spring Valley community, appropriate rules and regulations are needed to promote security and safety. Such provisions, as herein enumerated, are applicable to all residents, their guests where appropriate, visitors, and other such persons to include contractors, builders, and subcontractors. Our road system is private, and therefore access can be restricted to promote security and tranquility. At the same time, the state traffic control laws apply and can be enforced by any law officer as well as by our private security service.

1. The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

2. Traffic signs are posted for the safety of all residents, as well as to aid in the movement and control of vehicular traffic. The security force is authorized to issue citations for traffic violations. Fines paid or bonds forfeited go into the County Treasury.

3. The authorized Spring Valley bumper stickers (decals) must be displayed in plain view on the front and rear of all motorized vehicles, i.e., automobiles, recreational vehicles, motorcycles, motorbikes and mopeds.
(These stickers can be obtained by completing the application form available from a security officer or from the Administrative Manager.)

4. Motorbike operators are also required to comply with the traffic laws of South Carolina. All such two-wheel vehicles must meet all equipment requirements, have vehicle licenses, and their operators must be of age and licensed, as required by the South Carolina Motorcycle Laws. Pedal bicycles with helper motors of less than one horsepower may not be operated by persons under 12 years old, and of course, they are not eligible for a license to operate larger motor-driven vehicles.

5. The private road network of Spring Valley is not a race track for any type of motorized vehicle, nor should they be allowed to emit loud noises which are disturbing and distracting to the residential neighborhood. Again, this is the responsibility of parents to be sure that their children operate these vehicles in a mature and responsible manner.

Security and Safety (cont.)

6. Richland County has a "leash law" and the ordinance states: "that a dog be controlled by a leash or under the control of the owner and obedient to that person's command or within the property limits of its owner or keeper." Since this is a county-wide ordinance, the dog catcher is authorized to enter Spring Valley in response to a complaint. He is also authorized to enter the property of the dog's owner if the pursuit leads him there, provided he has seen the dog loose in violation of the ordinance. If you have a pet, and if you love your pet, please keep it at home and under control. If you have a complaint, the telephone number of the Richland County Ombudsman Office for Animal Control Center is 929-6000.

7. No soliciting is allowed in Spring Valley. If you are aware of unauthorized solicitations, please notify our Security Service at 261-9079.

8. Normal working hour guidelines for construction personnel who are working within Spring Valley are from 7 A.M. - 6 P.M., Monday through Friday. In the event extensions of this time are warranted, clearance and notification must be obtained from the Chairman of the Security Committee of the SVHA, or in his absence, from the private security agency responsible for security in Spring Valley. Such approvals must be obtained for **each** extension. No blanket extensions will be granted. However, in no event will work be permitted to be accomplished on Sunday or on the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving or Christmas except for emergency repairs due to natural disasters such as wind, fire or storms. No occupancy of unfinished houses is permitted.

Our security is furnished under a contract with a private security company. Their principal function is to patrol the area and man the gates at times established by the Spring Valley Homeowners Association. Security personnel are on duty at all times. The Richland County Sheriff has stated that Spring Valley has one of the lowest crime rates of any area in Richland County and he attributes this to the monitoring which is done by our private security service. Only through cooperative effort of the entire residential community can Spring Valley continue to be one of the major areas in Richland County having a minimum of serious incidents. Keeping a watchful eye out for your neighbors' properties and reporting suspicious activity can be of great help. You should also advise Security when you are going to be out of town for an extended period of time so that your property can be checked.

9

Security and Safety (cont.)

Private security officers are authorized by the Act to Regulate the Private Detective and Private Security Business (R 630, S 311) as follows:

> "Section 13. Any person covered by the provisions of Section 9 or properly registered or licensed under this Act who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and powers which Sheriff's have to make the arrest of any persons violating or charged with violating any of the criminal statues of this State, but shall have such powers to arrest only on the aforementioned property."

In addition, the Richland County Sheriff's Department provides routine patrols and is charged with answering calls in our community. In case of emergency, call 911.

By-Laws

Article I: Name and Location

Section 1. The name of this Corporation is Spring Valley Homeowners Association. It was incorporated under the Laws of the State of South Carolina on May 6, 1976.

Section 2. The principal office of the Association shall be in Columbia, South Carolina, with such mailing address as determined by the Board of Directors.

ARTICLE II: Definitions

Section 1. "Association" shall mean and refer to Spring Valley Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Properties" shall mean and refer to the real property conveyed to the Association and held for the use and benefit of the owners of property in Spring Valley Subdivision.

Section 3. "Residential Lot" shall mean and refer to any unimproved parcel of land located within Spring Valley Subdivision as defined herein below which is intended for use as a site for a detached, single family dwelling.

Section 4. "Family Dwelling Unit" shall mean and refer to any Residential Lot on which there has been constructed a detached, single family dwelling.

Section 5. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of any Residential Lot or Family Dwelling Unit.

Section 6. "Spring Valley" and "Spring Valley Subdivision" shall mean the original subdivision as developed by Pine Springs, Inc. including that area known as Spring Valley East, all as shown on a plat entitled "Composite Map of `Spring Valley' Richland County, near Columbia, South Carolina" dated October 8, 1975, revised April 21, 1977, recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X, pages 9086 A and B, plus that area known as Flora Tract I, containing 49.3 acres, and shown on a plat prepared for Edwin H. Cooper and C. W. Haynes & Co., Inc., by McMillan Engineering Co., dated December 17, 1975, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book W at page 125, and, if and when purchased by Pine Springs, Inc. that area known as Flora Tract II, containing 31.46 acres, consisting of Parcel "C" and Parcel "D" shown on a plat prepared for Pine Springs, Inc. and A. C. Flora by William Wingfield, R.L.S., dated December 14, 1970, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X at page 1366, plus any areas which may hereafter be accepted by the Association in accordance with these by-laws and not in violation of that certain Indenture, dated May 31, 1977, by and between Spring Valley Associates, Inc., Pine Springs, Inc., Spring Valley Homeowners Association and Spring Valley Roads & Parkways, Inc. recorded in the Office of the Register of Mesne Conveyance for Richland County in Deed Book D 426 at page 347.

By-Laws (cont.)

Section 7. "Board of Directors" shall mean Board of Directors of the Spring Valley Homeowners Association as regularly and duly elected from time to time according to the by-laws of the Association.

Section 8. "Members in Good Standing" shall mean the members of the Association as defined in Article IV whose voting rights have not been suspended as provided by Article X hereof.

ARTICLE III: Purposes and Powers

The corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purposes for which it is formed are:

> To provide an agency through which the Owners of property within Spring Valley may exercise management and control of the roads, streets, parks, and common properties within Spring Valley in order to maintain aesthetic standards within the subdivision and to provide adequate security protection to the residents and users thereof and for these purposes:
>
> > (a) to own, acquire, operate and maintain residential park, common areas, streets, roads, footways, lakes, dams, spillways; (b) to provide private police protection; (c) to maintain unkempt lands and trees in the Common Properties; (d) to fix assessments to be levied against the Residential Lots and Family Dwelling Units; (e) to pay taxes, if any, on the Common Properties; (f) enforce any and all covenants, restrictions and agreements applicable to the property within Spring Valley; and (g) to do any and all other things that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents and owners within Spring Valley.

ARTICLE IV: Members

Section 1. The Association shall have three (3) types of memberships:

(a) Regular Member - any owner of record of a Family Dwelling Unit in Spring Valley.
(b) Associate Member - the owner of a Residential Lot.
(c) Additional Member - Spring Valley Country Club.

Section 2. Members' Rights in Property. None of the members or officers of the Association shall have any vested interest in any money or other property belonging to the Association upon termination of his membership in the Association for any reason, nor shall he have any right to demand that any property, real or personal, belonging to the Association be turned over to him except as the law of South Carolina provides otherwise.

By-Laws (cont.)

ARTICLE V: Financial Participation of Members

Section 1. Method of Assessment.
(a) The initial assessment shall be $10.00 per month for each Family Dwelling Unit and $6.00 per month for each Residential Lot. The initial assessment for the Additional Member shall be $150.00 per month. The Board of Directors shall have the right to change the amount of the assessment from time to time, provided that any increase shall be proportionately uniform among all classes of members; and provided, further, that in the event the Board of Directors shall increase the "assessment set by the membership" by more than 20% of the said assessment rate, the membership shall have the right to void or reduce the amount of increase by action taken at a meeting of the membership called and held in accordance within 90 days after receipt of notice of such proposed increase. The term "assessment set by the membership" shall mean the latest assessment approved by membership vote, whether such vote establishes an assessment or results in a refusal to void an assessment set by the Board, and shall include the initial assessment set forth above.

(b) Assessments upon Residential Lots shall be made only with respect to those lots which have available all utility services planned to be installed by the developer and which front on a paved street or road.

(c) Owners of real estate are responsible for payment of assessment and compliance with established rules and regulations levied against the property even though the property has been rented to others.

Section 2. Manner of Payment

Each member's payment shall be due and payable quarterly. The Treasurer will notify members of the sum and due date. A service charge at the rate of 18% per annum, compounded quarterly, will be calculated on the balance of any member's account unpaid as of the beginning of the next succeeding quarter. Accounts that require legal remedy for collection will be assessed any and all expenses incurred by the Association including attorney fees, court costs, and filing fees.

Section 3. Use of Assessments

The monies collected by the Association shall be used for the maintenance of roads, lakes, dams, and common areas in Spring Valley to which recorded title is held by the Association, the providing of private police protection for the residents of Spring Valley, the operational expenses of the Association, the enforcement of the rights of the Association, and any other purposes which from time to time may be deemed necessary by a majority of the votes cast by the membership in accordance with the provisions for voting as specified in these By-Laws; provided, however, that those Owners who have obligations by virtue of recorded covenants to maintain the lakes, dams and spillway areas shall be solely responsible for such maintenance, the Association in such instances being merely an agency for the administration of such obligations.

By-Laws (cont.)

ARTICLE VI: Meetings of Members

Section 1. Annual Meeting.
The annual meeting shall be held on the second Tuesday of November at the hour of seven o'clock in the evening for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. The annual meeting may be moved to an alternate business day in that same week, provided at least thirty (30) days notice is given to all members.

Section 2. Special Meetings.
Special meetings of the members, for any purpose or purposes, unless otherwise provided by statute, may be called by the President or by a majority of the Board of Directors, and shall be called by the Secretary at the request of members in good standing representing not less than ten percent (10%) of the voting power of the Association.

Section 3. Place of Meeting.
The Board of Directors shall designate any place in the County of Richland as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

Section 4. Notice of Meeting.
Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 30 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, to each member entitled to vote at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid. Accompanying, or incorporated in, the notice shall be a description of the significant actions which shall have been taken by the Board of Directors and Committees of the Board since the last meeting as well as other information of interest or concern to the membership.

Section 5. Record Date for Notice and Vote.
Those names appearing on the books of the corporation as members as of a date chosen by the Board of Directors, which date shall not be less than 30 nor more than 50 days before the date of the meeting, shall be those who shall be entitled to receive notice of any annual or special meeting and who shall be entitled to vote at such meeting.

Section 6. Quorum.
Members of the Association in good standing having ten percent (10%) of the entire voting power of the Association, represented in person or by proxy, shall constitute a quorum at a meeting of the membership. If less than a quorum is present at a meet-

By-Laws (cont.)

ing, the holders of a majority of the voting power present may set a date for a substitute meeting not less than 30 nor more than 50 days later. At such subsequent substitute meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding withdrawal of enough members to leave less than a quorum.

Section 7. Voting of Membership.
Each Regular Member and each Associate Member in good standing shall be entitled to one vote for each Family Dwelling Unit and/or Residential Lot owned by such Member on each matter which is before the membership of the Association. The Additional Member shall be entitled to Fifty (50) votes on each such matter. At all meetings of members, a member may vote in person or by proxy executed in writing and filed with the Secretary of the Association before or at the time of the meeting. Where a Family Dwelling Unit or Residential Lot is owned by more than one person as tenants in common, joint tenants, life tenant and remainderman, or otherwise, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot. Voting by the Additional Member and other corporate members shall be by the officer, agent or proxy designated in the By-Laws or in a resolution of the Board of Directors of such member. In the absence of any such designation, the president, any vice president, secretary and treasurer of such member shall be presumed to possess, in that order, authority to vote for such member.

Section 8. Votes Required. A majority of votes cast at a meeting of members, duly held, at which a quorum, pursuant to Article VI, Section 6, is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting except as otherwise provided for by these By-Laws.

ARTICLE VII: Board of Directors: Number: Term of Office

Section 1. Number.
The Board of Directors shall consist of nine (9) elected members of the Association, who shall serve until their successors shall be elected by the members of the Association, and two (2) honorary directors. (Amendment to By-Laws adopted at Annual Membership Meeting on November 28, 1977.)

Section 2. Term of Office.
At the first annual meeting, Association members shall elect two (2) Directors for a one (1) year term, (2) Directors for a two (2) year term, and three (3) Directors for a three (3) year term. At each Annual Meeting thereafter members shall elect successors to the expired Board Member terms for terms of office of three (3) years each. Board Members may succeed themselves or be elected to a different position.

By-Laws (cont.)

Section 3. Directors and Officers.
Four of the members of the Board of Directors shall also be elected by the Board to fill the offices of President, Senior Vice-President, Secretary and Treasurer. The initial President and Secretary shall be those Directors who shall have been elected at the first annual meeting of members for one (1) year terms. The Senior Vice-President shall be one of the two Directors who shall have been elected at the first annual meeting of members for a two (2) year term. The Treasurer shall be one of the three Directors who shall have been elected at the first annual meeting of members for a three (3) year term. The officers shall serve at the pleasure of the Board of Directors.

Section 4. Removal.
Any Director may be removed from the Board, with or without cause, by a vote of the Members of the Association. In the event of death, resignation, or removal of a Director, the vacancy may be filled by the remaining Directors until the next Annual Meeting of the members of the Association or until any special meeting of the members called for the purpose of electing Directors.

Section 5. Compensation.
The Directors shall receive no compensation for attendance at regular or special meetings, provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefore.

Section 6. Honorary Directors of the Association.
Honorary Directors shall have voting privileges but shall not be permitted to hold any office in the Association. These Directors shall be the President of Pine Springs, Inc., and the Additional Member or their designated representatives.

Article VIII: Nomination of Directors

Section 1. Nomination.
Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nomination may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a Chairperson, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting of the Members, to serve from the close of each Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for the election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members only.

By-Laws (cont.)

Article IX: Meeting of Directors

Section 1. Regular Meetings.
Regular meeting of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings.
Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two of the Directors, after not less than two (2) days notice to each Director.

Section 3. Quorum.
A majority of the number of Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

Article X: Powers and Duties of the Board of Directors

Section 1. Powers
The Board of Directors shall have the power to:
(a) adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the Members and their guests thereon and to establish penalties for the infractions thereof:

(b) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended for a period not to exceed sixty (60) days from infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the By-Laws or the Articles of Incorporation, including the enforcement and exercise of all conditions, covenants, restrictions and limitations contained in deeds given by Pine Springs, Inc. or Spring Valley Associates, Inc. to lots or residence in Spring Valley;

(d) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors or if unusual circumstances force resignation;

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

(f) appoint such committees deemed appropriate in accordance with Article XII; and

By-Laws (cont.)

(g) adopt and publish rules and regulations governing the use and alteration of property located in Spring Valley that does not restrict deed restrictions, covenants, nor Richland County Ordinances. (Amendment to By-Laws adopted at Annual Membership Meeting on November 8, 2004.); and

(h) adopt and publish a schedule of fines as appropriate, for violations of covenents, deed restrictions, rules and regulations and/or By-Laws of the Spring Valley Homeowners Association (SVHA) by "owner(s)". (Amendment to By-Laws adopted at Annual Membership Meeting on November 8, 2004.).

Section 2. Duties

It shall be the duty of the Board of Directors to:

(a) establish, levy, assess and collect the assessments or charges pursuant to the provision of Article V of these By-Laws and covenants in the Deeds;
(b) cause to be kept, a complete record of all its acts and corporate affairs;
(c) furnish, upon demand by any Owner liable for an assessment, a certificate in writing signed by an Officer of the Association setting forth whether any assessment owed by such owner has been paid. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;
(d) supervise all Officers, agent and employees of this Association , and to see that their duties are properly performed;
(e) (1) send written notice of each assessment to every Owner subject thereto at least ten (10) days in advance of each assessment period;
(2) after other methods fail, to pursue all available legal remedies as necessary to collect all charges or assessments which are not paid within sixty (60) days after due date;
(f) procure and maintain adequate liability and hazard insurance on property owned by the Association;
(g) cause the Common Properties to be maintained; and
(h) see that all provisions of the By-Laws are complied with; and
(i) assess and collect fines for the continuous and repeated violation(s) of covenents, deed restrictions, rules and regulations, and/or By-Laws by "owner(s) until the violation(s) is/are abated. (Amendment to By-Laws adopted at Annual Membership Meeting on November 8, 2004.)

Article XI: Officers and Their Duties

Section 1. Enumeration of Offices.
The offices of the Association shall be a President, a Senior Vice President, a Secretary and a Treasurer, all of whom shall at all times be Members of the Board of Directors, and such other officers as the Board may from time to time designate.

Section 2. Election of Officers.
The election of Officers shall take place at the first meeting of the Board of Directors following the Annual Meeting of the Members.

By-Laws (cont.)

Section 3. Special Appointments.
The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 4. Resignation and Removal.
Any Officer may be removed from office with or without cause by the Board of Directors. Any Officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date accepted by two or more Board members.

Section 5. Vacancies.
A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 6. President.
The President shall be the principal executive Officer of the Association and shall, in general, supervise and control all of the business of the Association. He shall, when present, preside at all meetings of the Members. He may sign, with the Secretary or any other proper Officer of the Association, any deeds, mortgages, bonds, contracts, or other instruments which the Members or Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Members or Board of Directors or these By-Laws to some other Officer or agent of the Association; and in general shall perform all duties incident to the office of President and such other duties as may be assigned to him by the Board of Directors.

Section 7. Senior Vice President.
In the absence of the President or in the event of his death, inability or refusal to act, the Senior Vice President shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Senior Vice President shall perform such other duties as from time to time may be assigned to him by the President or the Board of Directors.

Section 8. Secretary.
The Secretary shall be responsible for written minutes of all meetings of the Board of Directors and the Association and maintain an official Minutes Record Book containing copies of the minutes; record, transcribe, and deliver to the Board of Directors the official minutes of every annual and special meeting not later than ten (10) days after the date of such meeting; act as custodian of all records, except those specifically assigned to others; publish newsletters after each Board meeting and prior to annual meetings; provide letters of welcome to newcomers and furnish all material relating to the Association and their responsibilities as Members; maintain current listings of all homeowners and lot owners; and perform all of the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or Board of Directors.

By-Laws (cont.)

Section 9. Treasurer.
The Treasurer shall have charge and custody of, and be responsible for, all funds of the Association; receive and give receipts for monies in the name of the Association in such banks, trust companies, or other depositories as may be selected by the Board of Directors; be responsible for presenting a financial report to the Membership at the annual meeting which shall include a financial accounting of the Association for the previous year, and a budget for the coming year; keep an accurate and detailed account, in the Treasurer's permanent book, of all monies received and paid; submit a statement at the regular meetings of the Board of Directors and the Association, including total balance on hand at the beginning of the period covered by the report, and the separate amounts credited to the general fund, receipts, disbursements, and the total balance on hand at the date of the report; provide notices of assessments to all Owners at least ten (10) days in advance of each assessment period; provide notice to delinquent Members and supply pertinent information if requested by a Member; notify the Board of Directors of Owners who have not paid their assessment within sixty (60) days after the due date; and do all other things which from time to time may be assigned to him by the Board of Directors.

Section 10. Compensation.
No compensation shall be paid to the Officers as such for their services, but by resolution of the Board of Directors and approved by the general membership.

Article XII : Committees

The Association shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XIII: Contracts, Loans, Checks and Deposits

Section 1. Contracts. The Board of Directors may authorize any Officer or agent or agents to enter into any contract or execute and deliver any instrument in the name of the Association, in an amount not to exceed an approved budgeted item plus any reserve fund which the Association may maintain for that specific item.

Section 2. Loans. No loan shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

By-Laws (cont.)

Section 3. Checks and Drafts. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such Officer or Officers, agent or agents, of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE XIV: General Provisions

Section 1. Waiver of Notice. Unless otherwise provided by law, whenever any notice is required to be given to any Member, Director, or Officer of the Association under the provisions of these By-Laws, a waiver thereon in writing, signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

Section 2. Amendments. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by a two-thirds majority of those Members present and voting at any annual or special meeting of the Association, provided the notice of such meeting, given in accordance with the requirements of Article VI, section 4, shall have given notice of the intention to alter, amend or repeal the By-Laws at such meeting, briefly setting forth the purpose of such proposed change.

Section 3. Fiscal year. The fiscal year of the Association shall be determined by the Board of Directors.

Section 4. Procedure. All meetings of the membership and of the Board of Directors shall be conducted in accordance with Roberts Rules of Order Revised according to the most recent edition.

Section 5. Property of Members and Association to be separate and distinct. The private property of the Members shall not be subject to the payment of Association debts, no matter how acquired, to any extent whatever, however each and every member shall be permanently liable for all dues and assessments not timely paid.

Section 6. Indemnity. The Association shall indemnify and hold harmless each person, his or her personal representative, heirs and assigns who shall or did serve as a Director or Officer of the Association from and against any and all claims or liabilities to which such persons become subject by reason of having heretofore or hereafter been a Director or Officer of the Association or by reason of any action alleged to have been taken or omitted by such persons as Director or Officer and shall reimburse each such party for all legal and other expenses reasonably incurred by him in such connection with any such claim or liability; provided however that no such person shall be indemnified against or be reimbursed for any expense in-

By-Laws (cont.)

curred in connection with any claim or liability arising out of said party's own negligence or willful misconduct.

Section 7. Dissolution of Corporation. The corporation may be dissolved upon the vote of a two-thirds majority of the entire membership of the Association, provided the notice of the meeting, given in accordance with the provisions of Article VI, Section 4, shall have stated that it would be for the purpose of considering dissolution of the corporation.

Section 8. Authority and Powers. All authority and powers not expressly granted to the Officers and Directors in these By-Laws are reserved to the membership.

Section 9. Annual Report. An annual report shall be prepared and presented to the membership at the Annual Meeting. This report shall include a financial accounting of the Association for the previous year and a budget for the coming year.

Rules and Regulations (Adopted at the Annual Membership Meeting on November 8, 2004 and Amended November 12, 2007.)

Architectural

1. **Structures**
   a) All new homes shall be a minimum of 3,000 heated square feet adjoining a lake or the golf course and 2,800 heated square feet elsewhere. Before construction may begin, a completion of deposit of $1,500 must be made with SVHA and a letter from the architectural committee approving the home and landscape plans must be received.

   b) An approval letter is required for any foot print modification to a home or any additional structures on the premises. At the Architectural Chairman or Board's discretion, the completion deposit may be required also. This includes fences, pools, and outbuildings of any description.

   c) The homeowner is responsible for any and all damage caused by their contractors to SVHA property or SVHA resident's property.

   d) All outbuildings shall be made of a material similar to with a style and likeness of the house. All outbuildings require a letter of approval from the architectural committee.

   e) Garage entry should always provide for a side or rear entry from the street.
      i) A corner lot may have a side entry which causes the entry to be direct from the street.
      ii) A direct entry from the street other than side entry (excluding corner lots) must have board approval.

   f) The minimum set back for a residence if fifty (50) feet from the curb to the most forward part of the house.
      i) Side line set back is fifteen (15) feet.
      ii) The board has the right to grant special exceptions to these set backs as it deems necessary.

   g) Paint does not require the approval of the architectural committee or board. Offensive shades of paint (or brick) that distract from the neighborhood are not allowed. The board has the right to require the removal of such an offense.

   i) Completion Schedule
      i) All construction should begin within six months of approval and be completed within 18 months of the approval date.

Rules and Regulations (cont.)

ii) The lot should be maintained in such a manner during construction that debris and trash will not accumulate and become unsightly to the neighborhood.

iii) The homeowner will also be expected to maintain the lot so that soil and/or sand will not wash into the streets or storm drainage system during construction.

iv) The homeowner will be responsible for controlling and properly disposing of any and all water on the lot that presents any potential hazard (problem) during and after construction is complete. This would include but not be limited to water problems that were caused by grading, construction, or springs and/or the natural flow of streams.

2. Fence Restrictions

a) A fence may be a maximum of four feet tall in the front yard and eight feet tall in the back yard.

b) A fence over four feet tall should not exceed the set back corners of the house unless it is used to hide an unattractive feature, such as an air conditioning unit.

c) A fence should be stepped up or down to follow the lay of the land.

d) A fence may be brought forward of the house if it has the appearance of being a main structure.

e) All fences must reach to the ground.

f) Approved fence material is wrought iron (or aluminum), stucco, brick, wood, metal chain link (back yard only) or invisible. Wood, brick, or stucco can be painted.

g) The finished or best side of the fence must face the neighbor's property.

h) All fences require the approval of the architectural committee or board. The board has the right to grant a special exemption as it deems necessary to the above rules.

i) A fence must be maintained in the manner originally approved by the Architectural Committee. Failure to maintain a fence in the original condition, as seen from both within the homeowners community as well as from the outer perime ter, will result in application of the Unsightly Conditions Fine Schedule.

3. Pool restrictions

a) Only in-ground swimming pools are allowed.

Rules and Regulations (cont.)

b) The pool must have a minimum set back of fifteen (15) feet from the back and side property lines.

c) The pool may be covered if the structure is joined to the house and has a similar design to the house.

d) All pools require the approval of the architectural committee or board. The board has the right to grant a special exemption as it deems necessary to the above rules.

4. **Antennas**

a) Only small (12" to 36") satellite dishes are allowed.

b) The dish must be located in the rear of the house and not be visible to the neighbors.

c) Architectural committee approval is not required, but the board retains the right to have unsightly dishes removed.

Use of Premises

1. **No vehicle deemed to be unsightly by the Association shall be permitted to remain on any portion of the property so as to be visible from adjoining property or public or private thoroughfares.**

a) Camper trailers, travel trailers, recreational vehicles, motor homes, mobile homes, boats, trailers, school buses, commercial vehicle(s), unlicensed or stored vehicle(s), and/or commercial equipment of any kind shall not be parked, stored or otherwise housed on any property in Spring Valley.

b) Unlicensed or stored vehicles may be kept in an enclosed garage.

c) Utility trailers that support the premises may be stored in a garage or out of sight of all neighbors.

d) Boats may be stored in a garage. If the residence is on a lake, the boat, as permitted under the deed restrictions, may be stored on the residence premises concealed from view.

e) All vehicles shall park in approved areas. These areas are garages, carports and paved driveways. No vehicles of any kind, whether owned or operated by owner or tenant, shall be routinely parked at any time on any roadway, median, lawn, or common area of Spring Valley.

Rules and Regulations (cont.)

Unsightly Conditions (Adopted at the Annual Membership Meeting on November 15, 2005 and Amended November 9, 2010.)

a) Each owner or tenant should prevent the accumulation of litter, trash, or rubbish on his or her property and keep the property clean and well maintained. This includes keeping grass, plants, and other vegetation cut, free of fallen leaves, and well trimmed, and picking up articles such as yard games and toys. A well maintained yard shall be expected to be regularly maintained. Occasional cutting, once weeds have created an eyesore, is not acceptable. Grass that has been allowed to deteriorate to significant areas of sand and weeds, with only occasional patches of grass is not acceptable. All landscaping and grounds shall be maintained in a condition to preserve the values of all properties within the community.

b) It also includes the placement of trash, debris, furniture, and large appliances curbside at the appropriate times.

c) During any construction, dirt, building debris and other construction-related refuse shall be cleaned from street and storm drains so as not to deposit silt and/or sediment and/or any debris into ditches, streams, ponds or any other area off the construction site. The Association may require additional clean-up if deemed necessary to fulfill the obligation stated herein.

d) If in the opinion of the Association, the owner or tenant is failing in this duty and responsibility, then the Association may give the owner written notice of such and the owner must undertake the care and maintenance required to restore the property to a safe, clean and attractive condition within fifteen (15) calendar days of such notice. If the owner fails to fulfill this duty and obligation after such notice, the Association shall have the right and power to implement a fine of one hundred dollars ($100) per week, until abatement, or the fines reach $1,500 per violation, per year.

Fine Structure for Abatement of Violations of Deed Restrictions, Spring Valley Homeowner Association (SVHA) Rules and Regulations and Ordinances of Richland County. (Adopted at the Annual Membership Meeting on November 8, 2004 and Amended November 9, 2010)

Fines

a) The owner shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The owner is expected to work in good faith with the General Manager to correct the violation within fifteen (15) days.

b) The board has the right to fine the owner $100.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year after the fifteen (15) day written notice to correct the violation. If a property has three (3) or more occurrences of the same violation during the same calendar year, a $100.00 fine will be levied immediately upon the third occurrence and any recurrence during that year. Additionally, if the violation is not corrected within one week, then the $100.00 weekly fine schedule will be implemented until abatement or the fines reach $1,500 per year, per violation.

c) With board approval, the owner may be sued to correct the violation.

d) If the owner does not correct the violation, the board can elect to assess the owner based on the estimated cost to correct the violation.

Common Questions and Answers

Here are the answers to many of the most commonly asked questions about Spring Valley. The questions have been categorized as follows:

General Questions *Page 26*

Architectural Review *Page 27*

Spring Valley Country Club *Page 27*

Garbage Service *Page 28*

Business Operations from Residence *Page 29*

Lakes *Page 30*

Restrictions *Page 30*

Security *Page 31*

Spring Valley Homeowners Association *Page 32*

General Questions and Answers

We have a question that is not covered in the Green Book. What should we do?

The Spring Valley Homeowners Association has several resources available to assist you. First, the Association has a Manager. You can reach the Manager at 788-2410. Common questions and problems often involve many of the topics covered in this section of the Green Book. Even if your problem does not directly involve the Association, the Manager may be able to assist you.

Second, the SVHA Administrative Manager handles all inquiries concerning Association billings and the sale of property. You can reach the Administrative Manager at 788-7711.

The third resource available to you is your Association Board. Each Board Member has been assigned an area of responsibility. A list of names, phone numbers, and areas of responsibility is contained in each SVHA quarterly newsletter. Please feel free to contact the Association Manager, the Administrative Manager, or a Member of the Board if you have any questions or concerns.

Architectural Review

We are planning on building a new home in Spring Valley. What do we need to do?

First, you need to review the deed restrictions. Please pay particular attention to minimum square footage and set back requirements. Secondly, notify your neighbors who are within view of your planned construction (new home, addition, fence, etc.) of your plans. The purpose is to seek comments, pro or con, about the proposed construction. This will preclude surprise and controversy when the construction begins. Finally, your plans must be submitted to the Chairman of the Architectural Committee for approval. This committee will verify that your plans comply with the requirements. In addition, the committee checks to make sure that the style of the house is appropriate and does not match another home on your block.

We are planning an addition to our home. Do we need approval from the Architectural Committee?

Yes. All additions and alterations to the exterior of your home require approval. This would also include fences, gazebos, unattached garages, satellite dishes and other structures. Please follow the guidelines stated in the previous question. Storage sheds cannot be approved.

Is there a time requirement associated with approval?

All approvals contemplate a start date within six months of approval and a completion date within eighteen months of approval. Extensions can be applied for with the Architectural Committee.

Spring Valley Country Club

Does residency in Spring Valley include a membership in the Country Club?

No. The Spring Valley Country Club is a private organization that includes residents and nonresidents of the Spring Valley subdivision. For information about club membership, please contact the club office at 788-3080.

May non-members use the golf course after hours?

Access to the golf course is limited to club members with golf privileges.

Is the golf course available for evening walks?

The club asks that no one walk on the course unless he or she is involved in a round of golf. It is a nuisance to golfers to have walkers or pets on the course. Additionally, there is a danger of being hit by a golf ball.

Garbage Service

Is it necessary to roll the "Herbie Curbie" trash can out to the street?

No. In fact, Spring Valley restrictions prohibit you from doing so. Your Association has made arrangements for back door pick-up. Your county taxes include a small fee for this service.

Why does the garbage service pick up only a portion of yard trash?

Richland County has an ordinance that requires the garbage service to pick up all of the yard trash that has been boxed or bagged. In addition, the garbage service is to take the equivalent of two "Herbie Curbies" of loose yard trash. If you have a large pile of loose trash, it may take several visits before it will be completely removed. You can prevent this situation by boxing or bagging a portion of the yard trash. In addition, you should avoid combining yard trash with your neighbor's. The garbage service may mistake it as the yard trash of one household instead of two. Do not put yard waste on vacant lots as it will not be removed.

May I put yard debris in the "Herbie Curbie?"

County regulations prohibit mixing household garbage, recyclables and yard trash. For that reason, please do not mix these types of trash. Please put yard debris by the street. Do not put the yard trash in the street or in a place where water may push it into the drainage system. Tree limbs must be less than four feet long and less than four inches in diameter for removal. Any limbs larger than this must be removed by the homeowner.

What role did the Homeowners Association play in selecting our current garbage service?

None. The garbage service is selected by Richland County, not by your Association. Your Association has no formal role with the garage service. However, we do maintain an open flow of communications with them. Whenever there is a problem, the garbage service tries to work with us. Please note that the schedule is set by Richland County .

I have an old can of paint. May I put this in the garbage?

No. By law, this is a hazardous waste material. Use it, give it away or donate it to charity. If the paint can is open and completely dry the garbage service will pick it up for disposal on the same day as yard waste is removed. **The can must be completely dry. Place the can at the curb with the lid removed.**

Garbage Service (cont.)

How do I dispose of large items such as furniture and washing machines?

The washing machine and other large items such as furniture and appliances, will be picked up during the week of the second Monday of the month by the garbage collector. Place these items near the curb (*but not on the street*) in front of *your home* on the Monday of the second week. Do not place any debris or garbage on vacant lots. The garbage service will not pick up any refuse from unimproved lots. Doors must be removed from refrigerators and freezers.

How do I dispose of debris from construction or remodeling?

Lumber, cement, wood and other construction debris will not be picked up curbside. Have your contractor remove the debris or take it to the County Landfill. The nearest County Landfill is located on Caughman Road off Highway 215 North.

How do I dispose of trees?

Trees will not be picked up curbside. They must be taken to the County Landfill. Branches less than four feet in length and four inches in diameter will be removed by the garbage service as yard waste. However, you must make sure that they are no larger than the dimensions stated above.

Business Operations from Residence

Is it permissible to operate a business out of our home in Spring Valley?

The deed restrictions in Spring Valley limit use to private residential purposes of a singe family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities and other activities that involve the public.

Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles or visitation by members of the public.

Lakes

Who is responsible for the lakes?

Responsibility for the lakes resides with the residents whose property borders on a given lake. Most of the lakes have their own Association that handles issues related to its particular lake. In addition, a member of the Association Board serves as the liaison to each Lake Association.

As a resident of Spring Valley, do I have access to the lakes?

Lake access is limited to those residents whose property borders on a given lake.

In order to perform necessary work in my yard, it will be necessary to lower the lake behind my house. With whom do I need to talk with about this matter?

Each lake should have its own "Lake Association". Your request to lower the lake should be submitted to the President of your lake association. In addition, please coordinate any such activity with the Association Board Member who oversees the lakes.

Restrictions

Are "For Sale" signs permitted?

Spring Valley deed restrictions prohibit all forms of signs within the subdivision. This includes all types of "For Sale" signs as well as lost pets signs, garage sale signs, remodeling signs, security service, and political signs. Balloons on mailboxes by owners or realtors are considered signs.

Is it permissible to operate a business out of our home in Spring Valley?

The Richland County Zoning Ordinance and deed restrictions in Spring Valley limit use to private residential purposes of a single family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities, and other activities that involve the public. Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles, or visitation by members of the public.

What about RVs, campers, boats, buses, commercial equipment, trailers and commercial vehicles?

These items are not permitted to be stored or parked in Spring Valley.

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Security

What is the speed limit in Spring Valley?

The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

Are the citations given by Security "real tickets"?

The citations, including speeding tickets, are issued by authorized law enforcement officers. The Association does not receive a portion of the fine.

How do I get in contact with Security?

The mobile phone number for the officer on duty is 261-9079. If the officer is on another call or not available, a voice mail message service is in place to take your message. The officer will be back with you shortly.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are staffed by Security?

Spring Valley maintains twenty-four hour security every day of the year. It should be noted that events do take the officer temporarily away from the phone. He or she may be offering assistance to a resident or investigating a situation. This may prevent an officer from being immediately available.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are the gates open?

Spring Valley has four gated entrances, the main entrance on Two Notch Road is manned by security each night. The entrances from Flora Road and two from North Springs Road are locked to all traffic at night. Those wishing to gain access to Spring Valley should use the main entrance on Two Notch Road during those hours. If you are expecting guests after hours, please direct them to enter through the main entrance on Two Notch Road. You should contact security at 261-9079 prior to the arrival of your guest to inform security that your guest has your permission to enter Spring Valley.

There is a street light on my street which is not working. What should I do?

The street lights are maintained by SCE&G. One of the tasks assigned to Security is to note lights that are not working and report them to SCE&G. If you see a light that is not working, you may report it directly to SCE&G at 748-3027. If you prefer, you may call the Spring Valley Manager at 788-2410.

Your Homeowners Association

Why do we have an Association?

Spring Valley was developed as a private community. As homeowners, we own the roads, drainage system, and common areas. The Association through the Board oversees the day-to-day management of these areas. In addition, the Association is here to assist the homeowners in maintaining the value, beauty, and integrity of Spring Valley. Providing security is an important aspect of this responsibility. The Board oversees activities related to these responsibilities.

How do I join the Association?

By owning property in Spring Valley, you are automatically a member of the Association and are subject to its restrictions, rules and regulations

When does the Association Board meet?

The Board meets on the fourth Thursday of the month at 6:30 pm. (Meeting time subject to change.) The meetings are held at the Spring Valley Country Club. The Board does not meet in November due to the Annual Meeting. The December meeting is usually rescheduled due to the holidays.

How do I bring an issue to the Board?

You should contact the Administrative Manager and request that your issue be put on the agenda. If you prefer to bring your concern before the formal Board meeting, please contact the Administrative Manager. To be on the agenda, it is preferred that you notify the Administrative Manger before noon of the Friday before the meeting.

How can I become more active in the Association?

The Association is always looking for residents interested in participating in the activities of Spring Valley. Please express your interest to any Board Member.

EXHIBIT

7

Record on Appeal 209

Record on Appeal 210

tabbies

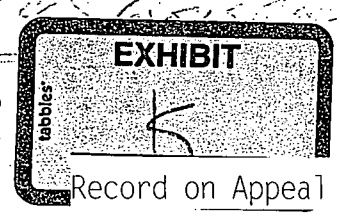
EXHIBIT

5

Information Guide

Deed Restrictions & Covenants

Spring Valley
Homeowners Association
January, 2003



We are delighted to have you as part of our community. As a property owner you are automatically a member of the Spring Valley Homeowner's Association. The Association is managed by an all volunteer Board and is ready to assist you within reasonable limits.

The strength of our community is a common desire to keep a pleasant and safe neighborhood, neat landscapes, clean streets and stable property values. We need your help to accomplish these objectives. This informational guide will give you answers to many of the questions you may have regarding your rights and responsibilities as a Spring Valley Homeowner. If you have further questions or require clarification, please contact the Association Manager or a member of our volunteer Board of Directors.

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Section 1 History and Deed Restrictions

History

Spring Valley Subdivision and Spring Valley Country Club were developed by Mr. Edwin Cooper through Pine Springs Inc. in the early 1960's. Mr. Michael J. Mungo, through Spring Valley Associates, developed tracks known as Flora Tract I & II beginning in 1976. Later, Spring Valley was expanded by extending East Springs Road (Section 12) and West Springs Road (Section 16). Old Spring Valley expanded with the addition of patio homes (Section 14); Sweet Gum (Section 15); Camberely Court, Enlow Court, Briarberry Road, and Wild Cherry Road Section 10). In 1976 the Spring Valley Homeowners Association was established by the residents. The residents accepted title to the roads, lakes, dams, spillways, parks, and common areas. This transfer gave the Spring Valley Homeowners Association the exclusive right to assess property owners in Spring Valley for the cost maintenance and security.

Three of the early residents who provided leadership and long-term support to the Spring Valley Homeowners Association are recognized by bronze plaques in the Honor Garden near the main entrance. They are Major General Roger K. Rhodarmer who was the founding President and advisor to the Board of Directors until his death in 2001, Mrs. Roberta Dunn who was a founding director and the Administrative Manager until her death in 1999, and Colonel John O. Scullion, a founding director, who later maintained the common areas until shortly before his death in 1998.

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Assessments

The indenture entered into between Pine Springs, Inc. and the Spring Valley Homeowners Association and between the Spring Valley Associates and the Spring Valley Homeowners Association assigns to the Spring Valley Homeowners Association the exclusive right to assess and collect from the property owners in Spring Valley charges for maintenance, repairs and security. These charges cover road and common area maintenance, security services and administrative costs. Bills are sent quarterly and are due on the first day of the quarter. Finance charges on past due accounts will be added as indicated on statement.

Deed Restrictions

You should have received the Indenture when you received the deed to your property. The Indenture imposes certain restrictions on the use of your property. You should read these deed restrictions carefully. They have a solid legal foundation in South Carolina. On August 17, 1977 the South Carolina Supreme Court ruled that deed restrictions are property and their violation is damage to property, thus making the violator subject to payment for damages incurred. Avoid this by adhering closely to your deed restrictions, thereby avoiding damage to your neighbors' properties and helping to maintain property values.

The following paragraphs are quotes of restrictions in Spring Valley from various deeds:

(a) By acceptance of this deed, the GRANTEE covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association, hereinafter referred to as SVHA, and will abide by its duly enacted rules, regulations and by-laws, and the GRANTEE will pay to SVHA the periodic assessment due SVHA for the purpose of maintenance of the streets, roads, storm drains, common properties of SVHA, security services and other items determined by the by-laws of SVHA as duly adopted from time to time, a current copy of which shall be furnished upon request. GRANTEE agrees that such periodic assessments shall constitute a lien upon the property, subject and junior to the rights of all first mortgages, to the rights of the holder of any mortgage securing a purchase money obligation for the purchase of or an interest in any improved or unimproved lot to which such assessment related, and to the rights of the holder of any mortgage securing an obligation incurred in connection with the installation or construction of permanent improvements upon the lot to which such assessment relates, as well as personal obligation of GRANTEE and every succeeding owner.

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Deed Restrictions (cont.)

(b) No structure shall be erected on this lot other than one single family dwelling and detached or attached garage of similar design, including servants' quarters, if desired; and no use shall be made of the property, or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family.

(c) No lot referred to herein shall be subdivided or reduced in size without the written consent of the GRANTOR.

(d) No noxious or offensive activity shall be carried on upon this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No hogs, goats, poultry, cows, or horses which shall constitute a nuisance or cause unsanitary conditions, or any undesirable situation to any neighboring property, shall be maintained on this lot; and nothing shall be done, or any condition permitted on said lot which shall pollute the water of any lake, stream or pond in or near Spring Valley Estates.

(e) No temporary structure or garage apartment shall be erected upon the lot.

(f) An easement is reserved unto the GRANTOR herein over five feet along each side line of each lot and over the front five feet and rear ten feet of each lot for the utility installations, utility rights-of-way and maintenance thereof, as well as drainage installations, drainage rights-of-way and maintenance thereof.

(g) All sewage disposal shall be through the sewer lines and plant to be provided by the developers or the East Richland County Public Service District, and no septic tanks shall be permitted except by separate agreement of the seller and approval of the Department of Health and Environmental Control.

(h) No building, fence, or other structure of any kind shall be erected, placed or altered on the lot hereby conveyed until the building plans, specifications, design and plot plan showing the location of the building, fence, or structure on this lot have been approved by the GRANTOR herein, in writing, as to conformity in size, type and quality, and as to harmony of design with existing structure with respect to topography and finished ground elevation.

Deed Restrictions (cont.)

(i) If the lot hereinabove described borders a pond or lake, then the GRANTEES use of the pond or lake shall be limited strictly to such purposes as may be authorized in writing by the grantor, and in the event of any damage to the dams after the year, 1965, the cost of repairs shall be borne by the bordering property owners on a pro-rate front foot basis. The use of motor boats on any of the lakes or ponds is to be prohibited unless authorized by the GRANTOR, the Spring Valley Country Club and a majority of the property owners owning property on the lake or pond.

(j) It is understood and agreed between the parties hereto that the hereinabove described property is sold as is and GRANTOR shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of streets after said streets have been dedicated to the county.

(k) Except as specifically provided for in this paragraph no "Sale" or "Rent" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:

1. Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon, not more than one (1) "For Sale" sign (the size and contents of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.

2. After the first sale of a lot with a dwelling thereon, no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by SVHA, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.

3. No sign shall ever be nailed or fastened to any tree at any time.

(l) No clothes lines, exposed garbage containers or other unsightly objects are to be erected or used on the property except where they are screened from the streets, lakes, adjoining properties or general view.

(m) No camper trailers, travel trailers, trucks, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles or commercial equipment of any kind are to be garaged or stored on the lots.

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Deed Restrictions (cont.)

(n) The lot herein described adjoins a proposed golf fairway including tee and green designated as fairway number ___. It is agreed that such fairway may become a part of the Spring Valley Country Club's golfing facility under an agreement between Pine Springs, Inc. and Spring Valley Country Club, and in such event, the property so designed will be conveyed to Spring Valley Country Club for exclusive use of its members and guests as a part of the club's golfing facilities. Until such property is conveyed to the Club, it will be held by the GRANTOR as open space for the exclusive use of GRANTOR and the owners of adjoining lots, subject to such restrictions as grantor may impose to prevent littering, abuse, trespassing, unleashed animals, or motor vehicles of any kind, or other activities which may be an annoyance or nuisance to any of the adjoining property owners. No building, playgrounds or picnic facilities or other structures shall be constructed on the property and no other use shall be made thereof unless agreed, in writing, by GRANTOR herein and the owners of a majority of the lots adjoining such property. In any event, GRANTOR agrees to maintain the property as open space for a period of fifteen (15) years from December 1, 1969, or until Spring Valley Club elects to construct the golf course, whichever occurs first.

The following paragraph relating to Block Park was not numbered in the deed. The lake referred to is Park Shore Lake.

(o) The lake front property owners, together with their immediate families and house guests, are to have the privilege of using the entire lake for swimming, boating and fishing, subject to rules, regulations and prohibitions approved by a majority of the owners of the property bordering on the lake, including the medians and walkways leading to the park.

If your property lies in Block Park or Block I, your attention is called to Paragraph (o) which grants special privileges to these lot owners. There are 101 lots in Block Park and the nine (9) lots in Block I which makes a total of 110 lots, the owners of which have the special privileges regarding the use of Park Shore Lake, the recreation park and the walkway between Park Shore Drive West and Park Shore Drive East.

Paragraph (i) states that lake front property owners have responsibility for their dam. Four of the dams (Entrance Lake, Clark Lake and the dams at North Lake Road) are Class A according to the Army Corp of Engineers. If a Class A dam suffered a cataclysmic failure there probably would be loss of life as well as property damage.

Deed Restrictions (cont.)

The other dams are Class B, i.e., there would be only extensive property damage in the event of a cataclysmic dam failure. Therefore, all owners of property bordering any lake should be aware of Paragraph (i) under the Deed Restrictions, and their potential responsibilities in the unlikely event of a cataclysmic dam failure. Likewise, for similar reasons, the owners of the 110 lots in Block Park and Block I, not bordering on Park Shore Lake should be aware of the stipulations in Paragraphs (i) and (o).

There are 100 lots that border on the proposed golf course. If your property borders on one of the two (2) areas held as a proposed nine hole golf course, your attention is called to Paragraph (n).

Note: As stated, one of these areas comprising 27.5 acres lying west of Block Park was developed because the option to construct 3 holes of golf on it has expired. The area which would accommodate the other 6 holes surrounds Blocks V and W in Old Spring Valley. It has been determined that the property which would have accommodated the 6 additional golf holes will not be developed as a golf course. Ownership of this property has reverted to Pine Springs, Inc. who has proposed a plan to utilize this property by subdividing part of it to be sold as 6 new building lots plus 9.34 acres on Brickyard Road to be developed outside of Spring Valley at a later date. The remainder to be divided into approximately 73 parcels and sold to present property owners whose property is contiguous to it. This plan has been approved and implemented.

The proposed golf course lots referred to in paragraph (n) above no longer exist. The acreage west of Block Park was developed by Pine Springs as Sweetgum Road. The acreage surrounding the proposed golf course in Blocks V and W was developed by Pine Springs into residential lots and individual parcels that were offered for sale to the adjoining property owners. Those adjoining parcels that have not been sold within ten (10) years (from 1993) will be conveyed by Pines Springs, Inc. to the Spring Valley Homeowners Association as common grounds.

Security and Safety

In order to maintain the residential quality and tranquility of the Spring Valley community, appropriate rules and regulations are needed to promote security and safety. Such provisions, as herein enumerated, are applicable to all residents, their guests where appropriate, visitors, and other such persons to include contractors, builders, and subcontractors. Our road system is private, and therefore access can be restricted to promote security and tranquility. At the same time, the state traffic control laws apply and can be enforced by any law officer as well as by our private security service.

1. The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

2. Traffic signs are posted for the safety of all residents, as well as to aid in the movement and control of vehicular traffic. The security force is authorized to issue citations for traffic violations. Fines paid or bonds forfeited go into the County Treasury.

3. The authorized Spring Valley bumper stickers (decals) must be displayed in plain view on the front and rear of all motorized vehicles, i.e., automobiles, recreational vehicles, motorcycles, motorbikes and mopeds.
(These stickers can be obtained by completing the application form available from a security officer or from the Administrative Manager.)

4. Motorbike operators are also required to comply with the traffic laws of South Carolina. All such two-wheel vehicles must meet all equipment requirements, have vehicle licenses, and their operators must be of age and licensed, as required by the South Carolina Motorcycle Laws. Pedal bicycles with helper motors of less than one horsepower may not be operated by persons under 12 years old, and of course, they are not eligible for a license to operate larger motor-driven vehicles.

5. The private road network of Spring Valley is not a race track for any type of motorized vehicle, nor should they be allowed to emit loud noises which are disturbing and distracting to the residential neighborhood. Again, this is the responsibility of parents to be sure that their children operate these vehicles in a mature and responsible manner.

Security and Safety (cont.)

6. Richland County has a "leash law" and the ordinance states: "that a dog be controlled by a leash or under the control of the owner and obedient to that person's command or within the property limits of its owner or keeper." Since this is a county-wide ordinance, the dog catcher is authorized to enter Spring Valley in response to a complaint. He is also authorized to enter the property of the dog's owner if the pursuit leads him there, provided he has seen the dog loose in violation of the ordinance. If you have a pet, and if you love your pet, please keep it at home and under control. If you have a complaint, the telephone numbers of the Richland County Animal Control Center are 929-6000 and 309-3297.

7. No soliciting is allowed in Spring Valley. If you are aware of unauthorized solicitations, please notify our Security Service at 261-9079.

8. Normal working hour guidelines for construction personnel who are working within Spring Valley are from 7 A.M. - 6 P.M., Monday through Friday. In the event extensions of this time are warranted, clearance and notification must be obtained from the Chairman of the Security Committee of the SVHA, or in his absence, from the private security agency responsible for security in Spring Valley. Such approvals must be obtained for **each** extension. No blanket extensions will be granted. However, in no event will work be permitted to be accomplished on Sunday or on the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving or Christmas except for emergency repairs due to natural disasters such as wind, fire or storms. No occupancy of unfinished houses is permitted.

Our security is furnished under a contract with a private security company. Their principal function is to patrol the area and man the gates at times established by the Spring Valley Homeowners Association. Security personnel are on duty at all times. The Richland County Sheriff has stated that Spring Valley has one of the lowest crime rates of any area in Richland County and he attributes this to the monitoring which is done by our private security service. Only through cooperative effort of the entire residential community can Spring Valley continue to be one of the major areas in Richland County having a minimum of serious incidents. Keeping a watchful eye out for your neighbors' properties and reporting suspicious activity can be of great help. You should also advise Security when you are going to be out of town for an extended period of time so that your property can be checked.

9

Security and Safety (cont.)

Private security officers are authorized by the Act to Regulate the Private Detective and Private Security Business (R 630, S 311) as follows:

> "Section 13. Any person covered by the provisions of Section 9 or properly registered or licensed under this Act who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and powers which Sheriff's have to make the arrest of any persons violating or charged with violating any of the criminal statues of this State, but shall have such powers to arrest only on the aforementioned property."

In addition, the Richland County Sheriff's Department provides routine patrols and is charged with answering calls in our community. In case of emergency, call 911.

By-Laws

Article I: Name and Location

Section 1. The name of this Corporation is Spring Valley Homeowners Association. It was incorporated under the Laws of the State of South Carolina on May 6, 1976.

Section 2. The principal office of the Association shall be in Columbia, South Carolina, with such mailing address as determined by the Board of Directors.

ARTICLE II: Definitions

Section 1. "Association" shall mean and refer to Spring Valley Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Properties" shall mean and refer to the real property conveyed to the Association and held for the use and benefit of the owners of property in Spring Valley Subdivision.

Section 3. "Residential Lot" shall mean and refer to any unimproved parcel of land located within Spring Valley Subdivision as defined herein below which is intended for use as a site for a detached, single family dwelling.

Section 4. "Family Dwelling Unit" shall mean and refer to any Residential Lot on which there has been constructed a detached, single family dwelling.

Section 5. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of any Residential Lot or Family Dwelling Unit.

Section 6. "Spring Valley" and "Spring Valley Subdivision" shall mean the original subdivision as developed by Pine Springs, Inc. including that area known as Spring Valley East, all as shown on a plat entitled "Composite Map of `Spring Valley' Richland County, near Columbia, South Carolina" dated October 8, 1975, revised April 21, 1977, recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X, pages 9086 A and B, plus that area known as Flora Tract I, containing 49.3 acres, and shown on a plat prepared for Edwin H. Cooper and C. W. Haynes & Co., Inc., by McMillan Engineering Co., dated December 17, 1975, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book W at page 125, and, if and when purchased by Pine Springs, Inc. that area known as Flora Tract II, containing 31.46 acres, consisting of Parcel "C" and Parcel "D" shown on a plat prepared for Pine Springs, Inc. and A. C. Flora by William Wingfield, R.L.S., dated December 14, 1970, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X at page 1366, plus any areas which may hereafter be accepted by the Association in accordance with these by-laws and not in violation of that certain Indenture, dated May 31, 1977, by and between Spring Valley Associates, Inc., Pine Springs, Inc., Spring Valley Homeowners Association and Spring Valley Roads & Parkways, Inc. recorded in the Office of the Register of Mesne Conveyance for Richland County in Deed Book D 426 at page 347.

By-Laws (cont.)

Section 7. "Board of Directors" shall mean Board of Directors of the Spring Valley Homeowners Association as regularly and duly elected from time to time according to the by-laws of the Association.

Section 8. "Members in Good Standing" shall mean the members of the Association as defined in Article IV whose voting rights have not been suspended as provided by Article IX hereof.

ARTICLE III: Purposes and Powers

The corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purposes for which it is formed are:

> To provide an agency through which the Owners of property within Spring Valley may exercise management and control of the roads, streets, parks, and common properties within Spring Valley in order to maintain aesthetic standards within the subdivision and to provide adequate security protection to the residents and users thereof and for these purposes:
>
> > (a) to own, acquire, operate and maintain residential park, common areas, streets, roads, footways, lakes, dams, spillways; (b) to provide private police protection; (c) to maintain unkempt lands and trees in the Common Properties; (d) to fix assessments to be levied against the Residential Lots and Family Dwelling Units; (e) to pay taxes, if any, on the Common Properties; (f) enforce any and all covenants, restrictions and agreements applicable to the property within Spring Valley; and (g) to do any and all other things that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents and owners within Spring Valley.

ARTICLE IV: Members

Section 1. The Association shall have three (3) types of memberships:

(a) Regular Member - any owner of record of a Family Dwelling Unit in Spring Valley.
(b) Associate Member - the owner of a Residential Lot.
(c) Additional Member - Spring Valley Country Club.

Section 2. Members' Rights in Property. None of the members or officers of the Association shall have any vested interest in any money or other property belonging to the Association upon termination of his membership in the Association for any reason, nor shall he have any right to demand that any property, real or personal, belonging to the Association be turned over to him except as the law of South Carolina provides otherwise.

By-Laws (cont.)

ARTICLE V: Financial Participation of Members

Section 1. Method of Assessment.

(a) The initial assessment shall be $10.00 per month for each Family Dwelling Unit and $6.00 per month for each Residential Lot. The initial assessment for the Additional Member shall be $150.00 per month. The Board of Directors shall have the right to change the amount of the assessment from time to time, provided that any increase shall be proportionately uniform among all classes of members; and provided, further, that in the event the Board of Directors shall increase the "assessment set by the membership" by more than 20% of the said assessment rate, the membership shall have the right to void or reduce the amount of increase by action taken at a meeting of the membership called and held in accordance within 90 days after receipt of notice of such proposed increase. The term "assessment set by the membership" shall mean the latest assessment approved by membership vote, whether such vote establishes an assessment or results in a refusal to void an assessment set by the Board, and shall include the initial assessment set forth above.

(b) Assessments upon Residential Lots shall be made only with respect to those lots which have available all utility services planned to be installed by the developer and which front on a paved street or road.

(c) Owners of real estate are responsible for payment of assessment and compliance with established rules and regulations levied against the property even though the property has been rented to others.

Section 2. Manner of Payment

Each member's payment shall be due and payable quarterly. The Treasurer will notify members of the sum and due date. A service charge at the rate of 18% per annum, compounded quarterly, will be calculated on the balance of any member's account unpaid as of the beginning of the next succeeding quarter.

Section 3. Use of Assessments

The monies collected by the Association shall be used for the maintenance of roads, lakes, dams, and common areas in Spring Valley to which recorded title is held by the Association, the providing of private police protection for the residents of Spring Valley, the operational expenses of the Association, the enforcement of the rights of the Association, and any other purposes which from time to time may be deemed necessary by a majority of the votes cast by the membership in accordance with the provisions for voting as specified in these By-Laws; provided, however, that those Owners who have obligations by virtue of recorded covenants to maintain the lakes, dams and spillway areas shall be solely responsible for such maintenance, the Association in such instances being merely an agency for the administration of such obligations.

By-Laws (cont.)

ARTICLE VI: Meetings of Members

Section 1. Annual Meeting.
The annual meeting shall be held on the second Monday of November at the hour of eight o'clock in the evening for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

Section 2. Special Meetings.
Special meetings of the members, for any purpose or purposes, unless otherwise provided by statute, may be called by the President or by a majority of the Board of Directors, and shall be called by the Secretary at the request of members in good standing representing not less than ten percent (10%) of the voting power of the Association.

Section 3. Place of Meeting.
The Board of Directors shall designate any place in the County of Richland as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

Section 4. Notice of Meeting.
Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 30 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, to each member entitled to vote at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid. Accompanying, or incorporated in, the notice shall be a description of the significant actions which shall have been taken by the Board of Directors and Committees of the Board since the last meeting as well as other information of interest or concern to the membership.

Section 5. Record Date for Notice and Vote.
Those names appearing on the books of the corporation as members as of a date chosen by the Board of Directors, which date shall not be less than 30 nor more than 50 days before the date of the meeting, shall be those who shall be entitled to receive notice of any annual or special meeting and who shall be entitled to vote at such meeting.

Section 6. Quorum.
Members of the Association in good standing having ten percent (10%) of the entire voting power of the Association, represented in person or by proxy, shall constitute a quorum at a meeting of the membership. If less than a quorum is present at a meeting, the holders of a majority of the voting power present may set a date for a substitute meeting not less than 30 nor more than 50 days later. At such subsequent sub-

By-Laws (cont.)

stitute meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding withdrawal of enough members to leave less than a quorum.

Section 7. Voting of Membership.
Each Regular Member and each Associate Member in good standing shall be entitled to one vote for each Family Dwelling Unit and/or Residential Lot owned by such Member on each matter which is before the membership of the Association. The Additional Member shall be entitled to Fifty (50) votes on each such matter. At all meetings of members, a member may vote in person or by proxy executed in writing and filed with the Secretary of the Association before or at the time of the meeting. Where a Family Dwelling Unit or Residential Lot is owned by more than one person as tenants in common, joint tenants, life tenant and remainderman, or otherwise, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot. Voting by the Additional Member and other corporate members shall be by the officer, agent or proxy designated in the By-Laws or in a resolution of the Board of Directors of such member. In the absence of any such designation, the president, any vice president, secretary and treasurer of such member shall be presumed to possess, in that order, authority to vote for such member.

Section 8. Votes Required. A majority of votes cast at a meeting of members, duly held, at which a quorum, pursuant to Article VI, Section 6, is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting except as otherwise provided for by these By-Laws.

ARTICLE VII: Board of Directors: Number: Term of Office

Section 1. Number.
The Board of Directors shall consist of nine (9) elected members of the Association, who shall serve until their successors shall be elected by the members of the Association, and two (2) honorary directors. (Amendment to By-laws adopted at Annual Membership Meeting on November 28, 1977.)

Section 2. Term of Office.
At the first annual meeting, Association members shall elect two (2) Directors for a one (1) year term, (2) Directors for a two (2) year term, and three (3) Directors for a three (3) year term. At each Annual Meeting thereafter members shall elect successors to the expired Board Member terms for terms of office of three (3) years each. Board Members may succeed themselves or be elected to a different position.

By-Laws (cont.)

Section 3. Directors and Officers.
Four of the members of the Board of Directors shall also be elected by the Board to fill the offices of President, Senior Vice-President, Secretary and Treasurer. The initial President and Secretary shall be those Directors who shall have been elected at the first annual meeting of members for one (1) year terms. The Senior Vice-President shall be one of the two Directors who shall have been elected at the first annual meeting of members for a two (2) year term. The Treasurer shall be one of the three Directors who shall have been elected at the first annual meeting of members for a three (3) year term. The officers shall serve at the pleasure of the Board of Directors.

Section 4. Removal.
Any Director may be removed from the Board, with or without cause, by a vote of the Members of the Association. In the event of death, resignation, or removal of a Director, the vacancy may be filled by the remaining Directors until the next Annual Meeting of the members of the Association or until any special meeting of the members called for the purpose of electing Directors.

Section 5. Compensation.
The Directors shall receive no compensation for attendance at regular or special meetings, provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefore.

Section 6. Honorary Directors of the Association.
Honorary Directors shall have voting privileges but shall not be permitted to hold any office in the Association. These Directors shall be the President of Pine Springs, Inc., and the Additional Member or their designated representatives.

Article VIII: Nomination of Directors

Section 1. Nomination.
Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nomination may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a Chairperson, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting of the Members, to serve from the close of each Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for the election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members only.

By-Laws (cont.)

Article IX: Meeting of Directors

Section 1. Regular Meetings.
Regular meeting of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings.
Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two of the Directors, after not less than two (2) days notice to each Director.

Section 3. Quorum.
A majority of the number of Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

Article X: Powers and Duties of the Board of Directors

Section 1. Powers
The Board of Directors shall have the power to:
(a) adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the Members and their guests thereon and to establish penalties for the infractions thereof:

(b) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended for a period not to exceed sixty (60) days from infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the By-Laws or the Articles of Incorporation, including the enforcement and exercise of all conditions, covenants, restrictions and limitations contained in deeds given by Pine Springs, Inc. or Spring Valley Associates, Inc. to lots or residence in Spring Valley;

(d) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors or if unusual circumstances forces resignation;

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

(f) appoint such committees as it deems appropriate in accordance with Article XII.

By-Laws (cont.)

Section 2. Duties
It shall be the duty of the Board of Directors to:

(a) establish, levy, assess and collect the assessments or charges pursuant to the provision of Article V of these By-Laws and covenants in the Deeds;
(b) cause to be kept, a complete record of all its acts and corporate affairs;
(c) furnish, upon demand by any Owner liable for an assessment, a certificate in writing signed by an Officer of the Association setting forth whether any assessment owed by such owner has been paid. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;
(d) supervise all Officers, agent and employees of this Association , and to see that their duties are properly performed;
(e) (1) send written notice of each assessment to every Owner subject thereto at least ten (10) days in advance of each assessment period;
(2) after other methods fail, to pursue all available legal remedies as necessary to collect all charges or assessments which are not paid within sixty (60) days after due date;
(f) procure and maintain adequate liability and hazard insurance on property owned by the Association;
(g) cause the Common Properties to be maintained; and
(h) see that all provisions of the By-Laws are complied with.

Article XI: Officers and Their Duties

Section 1. Enumeration of Offices.
The offices of the Association shall be a President, a Senior Vice President, a Secretary and a Treasurer, all of whom shall at all times be Members of the Board of Directors, and such other officers as the Board may from time to time designate.

Section 2. Election of Officers.
The election of Officers shall take place at the first meeting of the Board of Directors following the annual meeting of the Members.

Section 3. Special Appointments.
The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

By-Laws (cont.)

Section 4. Resignation and Removal.
Any Officer may be removed from office with or without cause by the Board of I rectors. Any Officer may resign at any time giving written notice to the Board, th President, or the Secretary. Such resignation shall take effect on the date accepte by two or more Board members.

Section 5. Vacancies.
A vacancy in any office may be filled by appointment by the Board. The Officer a pointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 6. President.
The President shall be the principal executive Officer of the Association and shall, i general, supervise and control all of the business of the Association. He shall, wher present, preside at all meetings of the Members. He may sign, with the Secretary or any other proper Officer of the Association, any deeds, mortgages, bonds, contracts, or other instruments which the Members or Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Members or Board of Directors or these By-Laws to some other Officer or agent of the Association; and in general shall perform all duties incident to the office of President and such other duties as may be assigned to him by the Board of Directors.

Section 7. Senior Vice President.
In the absence of the President or in the event of his death, inability or refusal to act, the Senior Vice President shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Senior Vice President shall perform such other duties as from time to time may be assigned to him by the President or the Board of Directors.

Section 8. Secretary.
The Secretary shall be responsible for written minutes of all meetings of the Board of Directors and the Association and maintain an official Minutes Record Book containing copies of the minutes; record, transcribe, and deliver to the Board of Directors the official minutes of every annual and special meeting not later than ten (10) days after the date of such meeting; act as custodian of all records, except those specifically assigned to others; publish newsletters after each Board meeting and prior to annual meetings; provide letters of welcome to newcomers and furnish all material relating to the Association and their responsibilities as Members; maintain current listings of all homeowners and lot owners; and perform all of the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or Board of Directors.

By-Laws (cont.)

Section 9. Treasurer.
The Treasurer shall have charge and custody of, and be responsible for, all funds of the Association; receive and give receipts for monies in the name of the Association in such banks, trust companies, or other depositories as may be selected by the Board of Directors; be responsible for presenting a financial report to the Membership at the annual meeting which shall include a financial accounting of the Association for the previous year, and a budget for the coming year; keep an accurate and detailed account, in the Treasurer's permanent book, of all monies received and paid; submit a statement at the regular meetings of the Board of Directors and the Association, including total balance on hand at the beginning of the period covered by the report, and the separate amounts credited to the general fund, receipts, disbursements, and the total balance on hand at the date of the report; provide notices of assessments to all Owners at least ten (10) days in advance of each assessment period; provide notice to delinquent Members and supply pertinent information if requested by a Member; notify the Board of Directors of Owners who have not paid their assessment within sixty (60) days after the due date; and do all other things which from time to time may be assigned to him by the Board of Directors.

Section 10. Compensation.
No compensation shall be paid to the Officers as such for their services, but by resolution of the Board of Directors and approved by the general membership.

Article XII : Committees

The Association shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XIII: Contracts, Loans, Checks and Deposits

Section 1. Contracts. The Board of Directors may authorize any Officer or agent or agents to enter into any contract or execute and deliver any instrument in the name of the Association, in an amount not to exceed an approved budgeted item plus any reserve fund which the Association may maintain for that specific item.

Section 2. Loans. No loan shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

By-Laws (cont.)

Section 3. Checks and Drafts. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such Officer or Officers, agent or agents, of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE XIV: General Provisions

Section 1. Waiver of Notice. Unless otherwise provided by law, whenever any notice is required to be given to any Member, Director, or Officer of the Association under the provisions of these By-Laws, a waiver thereon in writing, signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

Section 2. Amendments. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by a two-thirds majority of those Members present and voting at any annual or special meeting of the Association, provided the notice of such meeting, given in accordance with the requirements of Article VI, section 4, shall have given notice of the intention to alter, amend or repeal the By-Laws at such meeting, briefly setting forth the purpose of such proposed change.

Section 3. Fiscal year. The fiscal year of the Association shall be determined by the Board of Directors.

Section 4. Procedure. All meetings of the membership and of the Board of Directors shall be conducted in accordance with Roberts Rules of Order Revised according to the most recent edition.

Section 5. Property of Members and Association to be separate and distinct. The private property of the Members shall not be subject to the payment of Association debts, no matter how acquired, to any extent whatever, however each and every member shall be permanently liable for all dues and assessments not timely paid.

Section 6. Indemnity. The Association shall indemnify and hold harmless each person, his or her personal representative, heirs and assigns who shall or did serve as a Director or Officer of the Association from and against any and all claims or liabilities to which such persons become subject by reason of having heretofore or hereafter been a Director or Officer of the Association or by reason of any action alleged to have been taken or omitted by such persons as Director or Officer and shall reimburse each such party for all legal and other expenses reasonably incurred by him in such connection with any such claim or liability; provided however that no such person shall be indemnified against or be reimbursed for any expense

By-Laws (cont.)

incurred in connection with any claim or liability arising out of said party's own negligence or willful misconduct.

Section 7. Dissolution of Corporation. The corporation may be dissolved upon the vote of a two-thirds majority of the entire membership of the Association, provided the notice of the meeting, given in accordance with the provisions of Article VI, Section 4, shall have stated that it would be for the purpose of considering dissolution of the corporation.

Section 8. Authority and Powers. All authority and powers not expressly granted to the Officers and Directors in these By-Laws are reserved to the membership.

Section 9. Annual Report. An annual report shall be prepared and presented to the membership at the annual meeting. This report shall include a financial accounting of the Association for the previous year and a budget for the coming year.

Common Questions and Answers

Here are the answers to many of the most commonly asked questions about Spring Valley. The questions have been categorized as follows:

General Questions *Page 22*

Architectural Review *Page 23*

Spring Valley Country Club *Page 23*

Garbage Service *Page 24*

Business Operations from Residence *Page 25*

Lakes *Page 26*

Restrictions *Page 26*

Security *Page 27*

Spring Valley Homeowners Association *Page 28*

General Questions and Answers

We have a question that is not covered in the Green Book. What should we do?

The Spring Valley Homeowners Association has several resources available to assist you. First, the Association has a Manager. You can reach the Manager at 788-2410. Common questions and problems often involve many of the topics covered in this section of the Green Book. Even if your problem does not directly involve the Association, the Manager may be able to assist you.

Second, the SVHA Administrative Manager handles all inquiries concerning Association billings and the sale of property. You can reach the Administrate Manager at 319-3685.

The third resource available to you is your Association Board. Each Board Member has been assigned an area of responsibility. A list of names, phone numbers, and areas of responsibility is contained in each SVHA quarterly newsletter. Please feel free to contact the Association Manager, the Administrative Manager, or a Member of the Board if you have any questions or concerns.

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Architectural Review

We are planning on building a new home in Spring Valley. What do we need to do?

First, you need to review the deed restrictions. Please pay particular attention to minimum square footage and set back requirements. Secondly, notify your neighbors who are within view of your planned construction (new home, addition, fence, etc.) of your plans. The purpose is to seek comments, pro or con, about the proposed construction. This will preclude surprise and controversy when the construction begins. Finally, your plans must be submitted to the Chairman of the Architectural Committee for approval. This committee will verify that your plans comply with the requirements. In addition, the committee checks to make sure that the style of the house is appropriate and does not match another home on your block.

We are planning an addition to our home. Do we need approval from the Architectural Committee?

Yes. All additions and alterations to the exterior of your home require approval. This would also include fences, gazebos, unattached garages, satellite dishes and other structures. Please follow the guidelines stated in the previous question. Storage sheds cannot be approved.

Spring Valley Country Club

Is there a time requirement associated with approval?

All approvals contemplate a start date within six months of approval and a completion date within eighteen months of approval. Extensions can be applied for with the Architectural Committee.

Does residency in Spring Valley include a membership in the Country Club?

No. The Spring Valley Country Club is a private organization that includes residents and nonresidents of the Spring Valley subdivision. For information about club membership, please contact the club office at 788-3080.

May non-members use the golf course after hours?

Access to the golf course is limited to club members with golf privileges.

Is the golf course available for evening walks?

The club asks that no one walk on the course unless he or she is involved in a round of golf. It is a nuisance to golfers to have walkers or pets on the course. Additionally, there is a danger of being hit by a golf ball.

Garbage Service

Is it necessary to roll the "Herbie Curbie" trash can out to the street?

No. In fact, Spring Valley restrictions prohibit you from doing so. Your Association has made arrangements for back door pick-up. Your county taxes include a small fee for this service.

Why does the garbage service pick up only a portion of yard trash?

Richland County has an ordinance that requires the garbage service to pick up all of the yard trash that has been boxed or bagged. In addition, the garbage service is to take the equivalent of two "Herbie Curbies" of loose yard trash. If you have a large pile of loose trash, it may take several visits before it will be completely removed. You can prevent this situation by boxing or bagging a portion of the yard trash. In addition, you should avoid combining yard trash with your neighbor's. The garbage service may mistake it as the yard trash of one household instead of two. Do not put yard waste on vacant lots as it will not be removed.

May I put yard debris in the "Herbie Curbie?"

County regulations prohibit mixing household garbage, recyclables and yard trash. For that reason, please do not mix these types of trash. Please put yard debris by the street. Do not put the yard trash in the street or in a place where water may push it into the drainage system. Tree limbs must be less than four feet long and less than four inches in diameter for removal. Any limbs larger than this must be removed by the homeowner.

What role did the Homeowners Association play in selecting our current garbage service?

None. The garbage service is selected by Richland County, not by your Association. Your Association has no formal role with the garage service. However, we do maintain an open flow of communications with them. Whenever there is a problem, the garbage service tries to work with us. Please note that the schedule is set by Richland County .

I have an old can of paint. May I put this in the garbage?

No. By law, this is a hazardous waste material. Use it, give it away or donate it to charity. If the paint can is open and completely dry the garbage service will pick it up for disposal on the same day as yard waste is removed. **The can must be completely dry. Place the can at the curb with the lid removed.**

Garbage Service (cont.)

How do I dispose of large items such as furniture and washing machines?

The washing machine and other large items such as furniture and appliances, will be picked up during the week of the second Monday of the month by the garbage collector. Place these items near the curb (*but not on the street*) in front of ***your home*** on the Monday of the second week. Do not place any debris or garbage on vacant lots. The garbage service will not pick up any refuse from unimproved lots. Doors must be removed from refrigerators and freezers.

How do I dispose of debris from construction or remodeling?

Lumber, cement, wood and other construction debris will not be picked up curbside. Have your contractor remove the debris or take it to the County Landfill. The nearest County Landfill is located on Caughman Road off Highway 215 North.

How do I dispose of trees?"

Trees will not be picked up curbside. They must be taken to the County Landfill. Branches less than four feet in length and four inches in diameter will be removed by the garbage service as yard waste. However, you must make sure that they are no larger than the dimensions stated above.

Business Operations from Residence

Is it permissible to operate a business out of our home in Spring Valley?

The deed restriction s in Spring Valley limit use to private residential purposes of a singe family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities and other activities that involve the public.

Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles or visitation by members of the public.

Lakes

Who is responsible for the lakes?

Responsibility for the lakes resides with the residents whose property borders on a given lake. Most of the lakes have their own Association that handles issues related to its particular lake. In addition, a member of the Association Board serves as the liaison to each Lake Association.

As a resident of Spring Valley, do I have access to the lakes?

Lake access is limited to those residents whose property borders on a given lake.

In order to perform necessary work in my yard, it will be necessary to lower the lake behind my house. With whom do I need to talk with about this matter?

Each lake should have its own "Lake Association". Your request to lower the lake should be submitted to the President of your lake association. In addition, please co-ordinate any such activity with the Association Board Member who oversees the lakes.

Restrictions

Are "For Sale" signs permitted?

Spring Valley deed restrictions prohibit all forms of signs within the subdivision. This includes all types of "For Sale" signs as well as lost pets signs, garage sale signs, remodeling signs, security service, and political signs. Balloons on mailboxes by owners or realtors are considered signs.

Is it permissible to operate a business out of our home in Spring Valley?

The Richland County Zoning Ordinance and deed restrictions in Spring Valley limit use to private residential purposes of a single family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities, and other activities that involve the public. Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles, or visitation by members of the public.

What about RVs, campers, boats, buses, commercial equipment, trailers and commercial vehicles?

These items are not permitted to be stored or parked in Spring Valley.

Security

What is the speed limit in Spring Valley?

The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

Are the citations given by Security "real tickets"?

The citations, including speeding tickets, are issued by authorized law enforcement officers. The Association does not receive a portion of the fine.

How do I get in contact with Security?

The mobile phone number for the officer on duty is 261-9079. If the officer is on another call or not available, a voice mail message service is in place to take your message. The officer will be back with you shortly.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are staffed by Security?

Spring Valley maintains twenty-four hour security every day of the year. It should be noted that events do take the officer temporarily away from the phone. He may be offering assistance to a resident or investigating a situation. This may prevent an officer from being immediately available.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are the gates open?

Spring Valley has four gated entrances, the main entrance on Two Notch Road is manned by security each night. The entrances from Flora Road and two from North Springs Road are locked to all traffic at night. Those wishing to gain access to Spring Valley should use the main entrance on Two Notch Road during those hours. If you are expecting guests after hours, please direct them to enter through the main entrance on Two Notch Road. You should contact security at 261-9079 prior to the arrival of your guest to inform security that your guest has your permission to enter Spring Valley.

There is a street light on my street which is not working. What should I do?

The street lights are maintained by SCE&G. One of the tasks assigned to Security is to note lights that are not working and report them to SCE&G. If you see a light that is not working, you may report it directly to SCE&G at 748-3027. If you prefer, you may call the Spring Valley Manager at 788-2410.

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Your Homeowners Association

Why do we have an Association?

Spring Valley was developed as a private community. As homeowners, we own the roads, drainage system, and common areas. The Association through the Board oversees the day-to-day management of these areas. In addition, the Association is here to assist the homeowners in maintaining the value, beauty, and integrity of Spring Valley. Providing security is an important aspect of this responsibility. The Board oversees activities related to these responsibilities.

How do I join the Association?

By owning property in Spring Valley, you are automatically a member of the Association and are subject to its restrictions, rules and regulations

When does the Association Board meet?

The Board meets on the third Monday of the month at 7:00 pm. The meetings are held at the Spring Valley Country Club. The Board does not meet in November due to the Annual Meeting. The December meeting is usually rescheduled due to the holidays.

How do I bring an issue to the Board?

You should contact the Administrative Manager and request that your issue be put on the agenda. If you prefer to bring your concern before the formal Board meeting, please contact the Administrative Manager. To be on the agenda, it is preferred that you notify the Administrative Manger before noon of the Friday before the meeting.

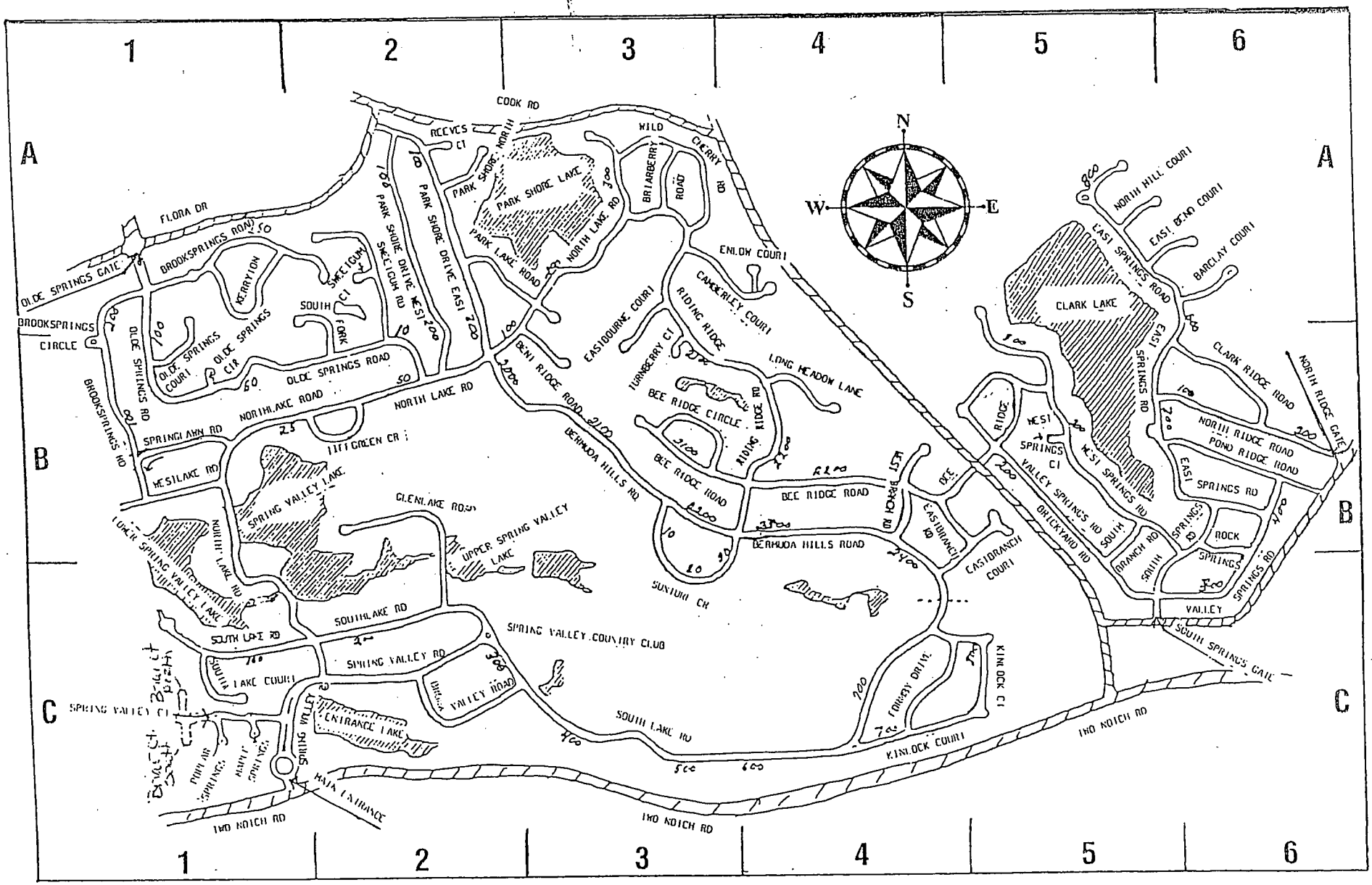
How can I become more active in the Association?

The Association is always looking for resident interested in participating in the activities of Spring Valley. Please express your interest to any Board Member.

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Street References

BARCLAY COURT	A-6	
BEE RIDGE CIRCLE	B-3	
BEE RIDGE ROAD	B-3	
BENT RIDGE ROAD	B-3	
BERMUDA HILLS ROAD	B-2	B-4
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BROOKSPRINGS CIRCLE	B-1	
BRIAR COURT NORTH	C-1	
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BROOKSPRINGS ROAD	A-1	
CAMBERLEY COURT	A-3	
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OLDE SPRINGS ROAD	A-1	
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POND RIDGE ROAD	B-6	
POPLAR SPRINGS COURT	C-1	
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RIDING RIDGE ROAD	A-3	
ROCK SPRINGS ROAD	B-6	
SOUTH BRANCH ROAD	B-5	
SOUTH FORK	B-2	
SOUTH SPRINGS ROAD	C-5	
SOUTHLAKE COURT	C-1	
SOUTHLAKE ROAD	C-1	C-3
SPRING VALLEY COURT	C-1	
SPRING VALLEY ROAD	C-2	
SPRINGLAWN ROAD	B-1	
SUNTURF CIRCLE	B-3	
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SWEETGUM ROAD	A-2	
TIFTGREEN CIRCLE	B-2	
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v.	)	Civil Action No.: 2012-CP-40-6974
Spring Valley Homeowners Association, Inc., Defendant.	)	**DEFENDANT'S MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Pursuant to Rule 56, SCRCP, the Defendant, Spring Valley Homeowners Association, Inc. ("Spring Valley HOA"), by and through its undersigned attorneys, offers this memorandum in support of its Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment. The Defendant contends that there is no genuine issue of material fact as to any of the claims and defenses raised in this matter, and that it is thus entitled to judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

II. FACTUAL AND PROCEDURAL HISTORY

This action involves the enforcement of Deed Restrictions in the Spring Valley subdivision in Columbia South Carolina. There are some undisputed facts for the Court to consider before reviewing the procedural history. First, it is undisputed that Plaintiff purchased his home subject to certain Deed Restrictions which were contained in the chain of title for each property and run with the land. It is undisputed that the Deed restrictions to which Plaintiff's deed is subject, (A copy of the deed is attached as **Exhibit A** and incorporated herein by reference) contains specific restrictions on the placement of "for sale" signs in the subdivision. It is undisputed that Plaintiff has been aware of these restrictions for many years.

Second, it is undisputed that prior to purchasing his home in Spring Valley, that the bylaws governing the HOA granted the HOA the authority to levy fines for violations of the Deed Restrictions. It is undisputed that those provisions in the bylaws have been amended and voted upon by the HOA membership at least two times since Plaintiff became a member of the HOA.

Third, it is undisputed that Plaintiff, aware of the restrictions against for sale signs and the possibility of potential fines did willingly and intentionally place a for sale sign on his property in direct violation of the Deed Restrictions. It is also undisputed that Plaintiff was given notice and ample time to correct the violation by the HOA, but chose to ignore the demands of the HOA until he was subjected to a fine for his willful violation. Despite having a method by which to alter the Deed Restriction and fine structure through the covenants and Bylaws of the HOA, Plaintiff instead has brought this action in an attempt to bypass those agreements and have this Court rule that those Deed restrictions are violative of South Carolina Law.

On August 31, 2007, the plaintiff purchased the property located at 118 Spring Valley Road in the Spring Valley neighborhood and the deed was recorded on November 4, 2007. . Pursuant to the deed, the conveyance of the property was "subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises." Thus, Plaintiff took the property subject to any covenants and deed restrictions of record in the chain of title. The covenants and restrictions contained in the chain of title for plaintiff's property are contained the 1979 deed from Pine Springs, Inc. to Goodwin Construction, Inc. A copy of such deed is attached as **Exhibit B** and incorporated herein by reference. The covenants and restrictions provide that grantee of the property "covenants and

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agrees that GRANTEE will become a member of the Spring Valley Homeowners Association and will abide by its duly enacted rules, regulations and bylaws..." Among other things, the covenants and restrictions provide for a restriction on placing "for sale" or "for rent" signs on the property. Further, the deed provides that: "AND IT IS UNDERSTOOD AND AGREED that the said conditions, covenants and restrictions shall be appurtenant to and run with the same premises; and that in the event of the violation of any of the said conditions, covenants and restrictions, the said GRANTOR, its successors or assigns, shall have the right, jointly or severally of abatement and to enforce compliance by injunction of [sic] any other appropriate legal action."

Pursuant to the deed covenants and restrictions, the Spring Valley HOA has duly enacted rules, regulations and bylaws. *See* the Affidavit of Beth Swindler and the exhibits thereto, which is attached as **Exhibit C** and incorporated herein by reference. Article III of by Bylaws provides that one of the purposes of the Spring Valley HOA is to "enforce any and all covenants, restrictions and agreements applicable to the property within Spring Valley..."[1] Article X, Section 1 of the Bylaws provides the following powers to the Spring Valley HOA Board of Directors, among other things:

1. The power to "adopt and publish rules and regulations governing the use of the common proper-ties and facilities, and the personal conduct of the Members and their guests thereon and to establish penalties for the infractions thereof"
2. The power to "exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the By-Laws or the Articles of Incorporation, including the

[1] A copy of the Information Guide containing the bylaws, rules and regulations, and the fine structure is attached as Exhibit 2 to the Affidavit of Beth Swindler (Exhibit C).

enforcement and exercise of all conditions, covenants, restrictions and limitations contained in deeds given by Pine Springs, Inc. or Spring Valley Associates, Inc. to lots or residence in Spring Valley"

Further, Article X, Section 2 of the Bylaws provides that it is the duty of the Board of Directors to "assess and collect fines for the continuous and repeated violation(s) of covenants, deed restrictions, rules and regulations, and/or By-Laws by owner(s) until the violation(s) is/are abated." Additionally, the duly adopted rules and regulations contain a fine structure for abatements of violations of the deed restrictions, rules and regulations, which is as follows:

> a) The owner shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The owner is expected to work in good faith with the General Manager to correct the violation within fifteen (15) days.
>
> b) The board has the right to fine the owner $100.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year after the fifteen (15) day written notice to correct the violation. If a property has three (3) or more occurrences of the same violation during the same calendar year, a $100.00 fine will be levied immediately upon the third occurrence and any recurrence during that year. Additionally, if the violation is not corrected within one week, then the $100.00 weekly fine schedule will be implemented until abatement or the fines reach $1,500 per year, per violation.
>
> c) With board approval, the owner may be sued to correct the violation.
>
> d) If the owner does not correct the violation, the board can elect to assess the owner based on the estimated cost to correct the violation.

As noted above, Plaintiff became a homeowner in the Spring Valley neighborhood on August 31, 2007, and thus, became a member of the Spring Valley HOA at that time. The amendment to the bylaws granting the Spring Valley HOA the authority to fine members for a violation of the bylaws, rules and regulations, and covenants and restrictions was adopted in 2004, thus, the Amendment was in place for years prior to Plaintiff purchasing property in Spring Valley.[2] Plaintiff had a duty to make himself aware of all applicable covenants, restrictions, bylaws, rules

[2] Affidavit of Beth Swindler.

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and regulations prior to his purchase and had a duty to keep current on any amendments after purchase. The up to date Information Guide containing the applicable bylaws, covenants and restrictions, rules and regulations, and fine structure has been available to all owners and prospective owners of property in the Spring Valley subdivision and is published on its website for all to read.[3]

To the extent Plaintiff claims lack of knowledge of the Spring Valley HOA's authority to levy fines, it should be noted that such authority was amended and altered twice since Plaintiff purchased his property. Plaintiff was provided with notices of annual meetings for November 12, 2007 and November 9, 2010 and the notices contained notices of proposed changes to the bylaws and the rules and regulations concerning the levying of fines.[4] These notices set forth the current rule and the proposed amended rule. The notice of the November 12, 2007 Annual Meeting is dated October 2, 2007, thus, Plaintiff had notice of the Spring Valley HOA's ability to fine no later than the receipt of the October 2, 2007 notice. Further, to the extent Plaintiff claims lack of knowledge of the deed restriction concerning "for sale" signs, it should be noted that Plaintiff specifically raised concerns about such restriction at the November 11, 2008 HOA Annual Meeting and again at the November 10, 2009 HOA Annual Meetings.[5] Thus, Plaintiff had knowledge of the restriction by at least 2008.

Despite Plaintiff's knowledge of the restriction on the placement of "for sale" signs and his knowledge of the Spring Valley HOA's ability to levy fines for violations of the restriction, Plaintiff placed a "for sale" sign on his property. He did so without bothering to seek prior approval from the Spring Valley HOA, thus knowingly and willfully violating the restriction on signage. On October 4, 2011, Carl Voges, the General Manager of the HOA, advised Plaintiff in

[3] Affidavit of Beth Swindler.
[4] Affidavit of Beth Swindler, including Exhibit 4.
[5] Affidavit of Beth Swindler, including Exhibit 1.

writing of his violation and advised that he had 15 days to remove the sign and that the fine schedule for the violation would begin to run if the sign was not removed by October 19, 2011.[6] Despite receiving the letter, Plaintiff did not remove the "for sale" sign from his property. On October, 20, 2011, Carl Voges notified Plaintiff in writing that the fine schedule had begun concerning his violation of the deed covenants and restrictions, as the sign had not been removed as previously directed.[7] Consequently, the HOA complied with the notice requirements contained in the fine structure prior beginning to levy any fine against Plaintiff. On October 23, 2011, Plaintiff's counsel wrote Carl Voges contesting the fine schedule and requesting that had hardship determination be made.[8] On November 7, 2013, counsel for the Spring Valley HOA advised Plaintiff's counsel that the HOA Board would hear him concerning his hardship request on December 8, 2011.[9] The "for sale" sign was not removed by Plaintiff until late November 2011 or Early December 2011 after Plaintiff had already secured a renter for his property.[10]

On December 8, 2011, Plaintiff's hardship request concerning the placement of a "for sale" sign was considered by the HOA Board.[11] At the meeting, Plaintiff admitted that he understood that no "for sale" signs are permitted without prior approval of the Board and that he never obtained prior approval.[12] The HOA board sought legal advice from its counsel, Harry Goldberg of the Finkel Law Firm, concerning the authority of the HOA to levy fines.[13] Upon advice of counsel concerning the authority of the HOA to levy fines, the Board voted at the December 8, 2011 meeting to impose/uphold a $500 fine against plaintiff for his violation deed covenants and restrictions. Plaintiff failed to pay the fine, therefore, the HOA Board voted at its February 23,

[6] Affidavit of Beth Swindler, including Exhibit 5.
[7] Affidavit of Beth Swindler, including Exhibit 5.
[8] Affidavit of Beth Swindler, including Exhibit 5.
[9] Affidavit of Beth Swindler, including Exhibit 5.
[10] Affidavit of Beth Swindler.
[11] Affidavit of Beth Swindler, including Exhibit 6.
[12] Affidavit of Beth Swindler, including Exhibit 6.
[13] Affidavit of Beth Swindler, including Exhibit 6.

2012 meeting to hire the Finkel Law Firm to pursue legal action against Plaintiff.[14] The Finkel Law Firm filed a lien against Plaintiff's property.[15] The lien was signed by the HOA President, Rodney Spivey, upon the request, direction and advice of legal counsel.[16] The lien on Plaintiff's property was filed by Defendant's legal counsel on September 13, 2012.[17] The lien was subsequently removed from Plaintiff's property by counsel for the HOA and there no longer exists any lien against Plaintiff's property by the HOA.[18]

III. SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRCP; See also Bayle v. S.C. Dept. of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001); Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct.App.2000). "In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in the light most favorable to the non-moving party." Wade v. Berkeley County, 330 S.C. 311, 317-17, 498 S.E.2d 684, 687 (S.C. Ct. App. 1998) (citations omitted). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 240, 355, 559 S.E.2d 327, 336 (Ct. App. 2001) (citation omitted).

IV. DISCUSSION

A. Plaintiff's Causes of Action for Declaratory Judgment Are Barred by the Statute of Limitations, Laches, Waiver and Equitable Estoppel

[14] Affidavit of Beth Swindler, including Exhibit 7.
[15] Affidavit of Beth Swindler, including Exhibit 8.
[16] Affidavit of Beth Swindler, including Exhibit 8.
[17] Affidavit of Beth Swindler, including Exhibit 9.
[18] Affidavit of Beth Swindler.

Restrictive covenants are considered voluntary contracts between the parties. See, Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). See also, Seabrook Island Property Owners' Ass'n v. Berger, 365 S.C. 234, 239, 616 S.E.2d 431, 434 (Ct. App. 2005) (restrictive covenants are contractual in nature). The statute of limitations for an action upon a contract is three years. S.C. Code Ann. § 15-3-530(a). Further, such an action must be commenced within "three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. As set forth above, Plaintiff knew of should have known of the restrictive covenants, bylaws, rules and regulations, and the fine structure that he seeks to challenge in his declaratory judgment causes of action when he purchased the property. Even if he was not aware of them at the time of time of the property purchase, he became aware of the Spring Valley HOA's ability to fine no later than October 2007 when the notice of the 2007 Annual Meeting was distributed to homeowners, as set forth above. Further, as set forth above, Plaintiff raised his concerns with the restriction on "for sale" signs at the 2008 Annual Meeting. Therefore, at a minimum, Plaintiff knew of the restriction on "for sale" signs by the end of 2008. Nevertheless, this action was not filed until October 15, 2012, which is well past three years after Plaintiff knew or should have known that he had a cause of action to challenge the applicable restrictive covenants, bylaws, rules, and regulations.

Further, under "the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinary refuse to enforce those rights." Chambers of S.C., Inc. v. County Council, 315

S.C. 418, 421, 434 S.E. 2d 279, 280 (1993). As set forth above, Plaintiff has known of the restrictions that he now seeks to challenge for many years. He has even raised concerns with the "for sale" sign restriction as early as 2008. Nevertheless, he did not bring this action until October 15, 2012. The failure to bring suit to challenge the restrictions, bylaws, rules and regulations, and fine schedule until October 15, 2012 constitutes an unreasonable delay. Due to Plaintiff's failure to timely challenge the rules and restrictions, Defendant has relied on the validity of the rules and restrictions in enforcing them against members of the Spring Valley HOA, including against Plaintiff. Due to Plaintiff's delay in challenging the restrictions and rules, Defendant proceeded to enforce the restrictions and rules against Plaintiff and has now has been forced to incur the expenses of defending claims of monetary damages by Plaintiff arising out of such enforcement. Such expenses would not have been incurred had Plaintiff not unreasonably delayed his legal challenge to the rules and restrictions. Further, Plaintiff's failure to timely challenge the rules and restrictions amounts to a waiver of the right to challenge such restrictions and Plaintiff is now estopped from challenging them.

For the reasons set forth above, Plaintiff has failed to timely challenge the applicable rules and restrictions, thus Defendant is entitled to summary judgment as to Plaintiff's causes of action for declaratory judgment. Since Plaintiff's causes of action for declaratory judgment challenging the validity of the rules and restrictions must be dismissed, the rules and restrictions must be presumed to be valid and enforceable for the purposes of Plaintiff's two remaining causes of action for monetary damages. Since Defendant's actions were in accord with the valid and enforceable rules and restrictions, there is no genuine issue of material fact as to Plaintiff's causes of action for Slander of

Title and Unfair Trade Practices, as these causes of action are premised upon Plaintiff's assertion that the rules and restrictions were unenforceable and contrary to South Carolina law. Therefore, Defendant is entitled to summary judgment on Plaintiff's causes of action for monetary damages as well.

B. The Court Should Grant the Defendant's Motion for Summary Judgment, Deny Plaintiff's Motion for Summary Judgment and Hold that, as a Matter of Law, the Defendant Has the Power and Authority to Fine the Plaintiff

The Plaintiff asserts that a Homeowners Association lacks the power and authority to fine its members. Specifically, Plaintiff contends that only governmental entities have the authority to levy fines, unless such authority is delegated to others by statute. The South Carolina Courts have not yet directly addressed a homeowners' association's authority and ability to fine its members.

Nevertheless, other jurisdictions have expressly upheld a HOA's authority to fine a homeowner for violating a restrictive covenant. In Zerquera v. Centennial Homeowners' Association, Inc., the Florida Court of Appeals upheld a fine against a homeowner for violating a restrictive covenant regarding the wrongful parking of an automobile. Zerquera v. Centennial Homeowners' Association, Inc., 721 So.2d, 751 (Fla. Dist. Ct. App. 1998). The court noted that the power to assess a fine was established in the amended covenants and the amended covenants were applicable to Zequera, even though he purchased the property before the covenants were amended. Id. at 752-53. In Crouch v. Bent Tree Community Inc., the Georgia Court of Appeals upheld fines for a violation of a restrictive covenant regarding the wrongful storage of a boat, noting that the covenants and restrictions stated that every property owner "shall comply with the Declaration and rules and regulations of [Bent Tree] adopted pursuant thereto, and any lack of

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compliance shall entitle [Bent Tree] ... to take action to enforce the terms of the Declaration or [the] rules and regulations." Crouch v. Bent Tree Community Inc., 713 S.E.2d 402, 404-06 (Ga. Ct. App. 2011).

Although restrictive covenants are strictly construed, the rule of strict constructions does not preclude their enforcement. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). "A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose" and the rule of strict construction "will not be used to defeat the clear express language of the covenant." Id. Furthermore, "[c]ourts shall enforce such covenants unless they are indefinite or contravene public policy. Id. Here, the relevant restrictions, bylaws, rules and regulations, and fine structure are clear and unambiguous and must be enforced. Further, Defendant has been unable to locate any South Carolina legal authority holding that it is against public policy for a HOA to fine its members for violations of the bylaws, rules and regulations, or restrictive covenants. In fact, it would create undesirable public policy if HOAs were prohibited from issue fines to enforce the rules and restrictions. The only other option would be for the HOA to file a legal action against a member seeking injunctive relief every time there is a violation. This method of enforcement would allow intentional violators to escape without suffering any consequences and render the deed restrictions worthless and ineffective. The HOA would have to hire an attorney to pursue every violation.

Ultimately, the cost to the HOA and violating homeowner would greatly exceed the cost of any fine imposed, as the homeowner would have legal fees, would be subject to attorney's fees being awarded to the HOA, and would still have to pay any award of damages. For example, in Seabrook Island Property Owners' Association v. Berger, the South Carolina Court of Appeals upheld and award of $39,194.08 in attorney's fees to the homeowners association in

an action for injunctive relief against homeowner for violations of the restrictive covenants. Seabrook Island Property Owners' Association v. Berger, 365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005). Even if attorney's fees were not awarded to the HOA, the HOA would still have incurred the legal expenses and those legal costs would ultimately have to be passed on to the homeowners in the form of higher dues and assessments. Further, if a legal action had to be filed for every violation of the rules and restrictions, it would open a whole new floodgate of lawsuits, placing an undue burden and stain on our judicial system. Consequently, if an HOA is found to not have authority to issue fines to enforce its covenants and restrictions, ultimately it will be the homeowners that suffer. These are the same homeowners who voted to grant the authority of the Board to issue fines to maintain the common scheme of their neighborhood. This type of ruling would create bad public policy.

The Spring Valley Homeowners Association is a non-profit corporation and is governed by the South Carolina Nonprofit Corporation Act. S.C. Code Ann. § 33-31-101, et seq. Pursuant to the South Carolina Nonprofit Corporation Act, the corporation shall adopt bylaws and the "bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation." S.C. Code Ann. § 33-31-206. Further, the South Carolina Nonprofit Corporation Act grants the following powers to a nonprofit corporation, among other things:

> Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:
>
> ...

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the corporation;

...

(10) to conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this State;

...

(15) to impose dues, assessments, and admission and transfer fees upon its members;

...

(18) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

S.C. Code Ann. § 33-31-302. The imposition of fines is necessary and convenient to further the activities and affairs of the corporation and is not inconsistent with law, as set forth above. Additionally, the imposition of a fine is akin to dues or specific assessments. Finally, a provision in the bylaws granting the ability to fine is a provision of the bylaws regulating and managing the affairs of the corporation, and is not inconsistent with law or public policy, as set forth above.

Further, if the Court was to find that only governmental entities can issue fines, such a ruling could have potentially wide reaching negative impacts on business and society as whole. A large number of organizations and associations rely upon fines as the only method of enforcing their rules and bylaws including homeowner associations. There are numerous other situations where fines are traditionally imposed by entities other than governmental entities. For example, employers have traditionally fined employees by docking pay for certain company policy violations. An employer requiring an employee to take unpaid leave is akin to a fine. Further, professional sports organizations routinely fine athletes for violations of league policies. One does not have to think too hard to find examples of when the NFL, MLB, NHL, NBA, NCAA or NASCAR have issued fines to the athletes or sports teams they govern. Amateur

sports leagues fine their members for poor behavior, fighting and failure to show up to games. Hotels fine guests for violations of hotel rules, such as the no smoking policy or the pet policy. Credit card companies routinely issue late fees, which are fines. To rule that a homeowners association cannot issue fines would mean that none of the above-referenced entities could continue to issue fines and would have wide reaching effects. Such a ruling would significantly impair such entities' ability to govern and regulate their members and enforce their rules, which would have a detrimental impact on business and society as a whole.

Based on the foregoing, the defendant respectfully requests that the court find as a matter of law that the Defendant has the power and authority to issue fines to its members for violations of the rules and restrictions. Thus, summary judgment should be granted to Defendant and denied to Plaintiff.

C. The Court Should Grant the Defendant's Motion for Summary Judgment and Deny Plaintiff's Motion for Summary Judgment and Hold that, as a Matter of Law, the Fine Levied against the Plaintiff is Not an Unenforceable Penalty

As noted above, pursuant to the South Carolina Nonprofit Corporation Act, a nonprofit corporation has statutory authority to levy fines. Consequently, given that the Spring Valley has statutory authority to issue a fine, the issue and analysis of whether such a fine constitutes an unenforceable contractual penalty is inapplicable and moot. See Spratt v. Henderson Mill Condominium Ass'n, Inc., 481 S.E.2d 879, 881-82 (Ga. Ct. App. 1997) (fines authorized by statute are neither a liquidated damages award nor an unenforceable penalty). Further, as noted above, other jurisdictions have upheld a HOA's ability to fine, which is an implicit finding that the ability to fine does not constitute an unenforceable penalty.

Additionally, as set forth above, if the Court rules that the issuance of a fine by a HOA is an unenforceable penalty, it would have far reaching negative impacts on business and society as

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a whole, as it would be a ruling that no person or entity can contractually subject itself to the authority and governance of any non-governmental entity. Professional sports teams and governing organizations would no longer have the authority fine of sanction member teams and players. The NCAA would no longer have any authority to enforce its rules by the issuance of sanctions, such as those handed down against Penn State in recent years. Employers could no longer enforce compliance with company policies by the issuance of fines and could no longer suspend employees without pay. Hotels could no longer charge penalties or fees for violations of the hotel rules. Credit card companies could no longer issue late fees. The list could go on and on.

To the extent that the Court wishes to entertain the "contractual penalty" argument, it should be noted "'Parties to a contract may stipulate as to the amount of liquidated damages owed in the event of non-performance." Foreign Academic & Cultural Exch. Servs. V. Tripon, 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011) (quoting Lewis v. Premium Inv. Corp. 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002)). "'Where, however, the sum stipulated is plainly disproportionate to any probable damage resulting from the breach of contract, the stipulation is an unenforceable penalty.'" Id. In this situation, the bylaws, rules and restrictions provide for a fine of $100 per week, not to exceed $1500 per year. Such a fine is reasonable and is proportionate to any harm resulting from the violation. Plaintiff would have this Court hold that the HOA must file an injunction for every violation of the Deed Restrictions. If this were the Court's ruling, the HOA would incur significant attorney's fees for each violation. The costs to the HOA of filing and prosecuting an injunction, and costs of enforcing such an injunction would far exceed the fines authorized by the HOA Bylaws. The costs to the homeowner in defending such and injunction would be significantly higher than any fine that could be imposed by the

HOA. Thus, the fine structure is reasonable and not disproportionate to the potential damage resulting from any violation.

Finally, with regard to the "contractual penalty" argument, Defendant contends that a distinction should be drawn between agreements bound to, regulated by and governed by an entity, as opposed other kinds of contracts, such as contracts for the sale of goods or services. Typically, the "contractual penalty" versus "liquidated damages" discussion comes into play when the primary subject matter of the contract is something other than the regulation and governance of parties thereto, including enforcement of the standards of conduct. However, Defendant contends that when the primary purpose of the agreement is to establish a system of governance, including enforcement of standards of conduct, the "contractual penalty" analysis should not apply. Otherwise, no person or entity could ever contractually agree to be bound to be regulated by a non-governmental entity. As set forth above, traditionally, persons and other entities have been allowed to contractually agree to be regulated by and governed by non-governmental entities, including contractually submitting such entities ability to sanction and fine.

Based on the foregoing, the defendant respectfully requests that the court find as a matter of law that the fine is not an unenforceable penalty. Thus, summary judgment should be granted to Defendant and denied to Plaintiff.

D. The Court Should Grant the Defendant's Motion for Summary Judgment, Deny Plaintiff's Motion for Summary Judgment and Hold that, as a Matter of Law, that the Defendant Has Not Waived its Right to Enforce the Covenants and Restrictions

"'Waiver is a voluntary and intentional abandonment or relinquishment of a known right.'" Laidlaw Envtl. Servs., Inc. v. AETNA Cas. & Sur. Co., 338 S.C. 43, 52, 524 S.E.2d 847, 852 (Ct. App. 1999) (quoting Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307

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S.C. 339, 344, 415 S.E.2d 384, 387 (1992)). Plaintiff has failed to come forth with any evidence that the HOA voluntarily and intentionally abandoned its right to enforce the restrictive covenants. Rather, as set forth in the affidavit of Beth Swindler, the Spring Valley HOA has consistently and uniformly enforced the restriction against "for sale" signs. Consequently, the defendant respectfully requests that the court find as a matter of law that the Spring Valley HOA did not waive its right to enforce the restriction against "for sale" signs and grant summary judgment to Defendant and deny summary judgment to Plaintiff.

E. The Court Should Grant the Defendant's Motion for Summary Judgment, Deny Plaintiff's Motion for Summary Judgment, and Hold that, as a Matter of Law, the Deed Restriction Concerning "For Sale" Signs Does Not Violate Public Policy as an Unreasonable Restriction on the Alienation of Property

The restriction on the placement of "for sale" signs is not a restraint on the alienation of property, let alone an "unreasonable" restraint on the alienation of property. As noted in the affidavit of Beth Swindler, thousands of properties have been sold in the Spring Valley subdivision even though the "for sale" sign restriction has been in place since 1979. Plaintiff likely purchased his property in Spring Valley without seeing a "for sale" sign on the property. Plaintiff can engage the services of a real estate agent to sell his property. He could also place an advertisement in the newspaper or any other print source or advertise his property online. There are a myriad of ways that Plaintiff may market his property. The fact is that homeowners continue to sell homes in Spring Valley every month. The simple fact that he cannot display a "for sale" sign does not prevent him from selling or otherwise transferring title to his property. Plaintiff just does not like the rule and refuses to follow the rules that he and every other owner in the Spring Valley subdivision has agreed to. Further, other jurisdictions have found that restrictive covenants prohibiting the placement of "for sale" signs do not constitute

unenforceable restraints on the alienation of property. See, Godley Park Homeowners Ass'n, Inc. v. Bowen, 649 S.E.2d 308, 310-11 (Ga. Ct. App. 2007).

Consequently, the defendant respectfully requests that the court find as a matter of law that the restriction against "for sale" signs does not constitute an unenforceable restraint on the alienation of property and grant summary judgment to Defendant and deny summary judgment to Plaintiff.

F. The Court Should Grant the Defendant's Motion for Summary Judgment, Deny Plaintiff's Motion for Summary Judgment as to Plaintiff's Causes of Action for Unfair Trade Practices and Slander of Title

Plaintiff has alleged two causes of action asserting monetary damages against Defendant. First, Plaintiff has alleged violations of the Unfair Trade Practices Act. Plaintiff has also alleged Slander of Title. Both of these causes of action are premised on Plaintiff's contention that the Spring Valley HOA did not have authority to fine Plaintiff. Because Defendant has demonstrated that it had legal authority to issue and levy fines and is entitled to summary judgment on that issue, as set forth above, there is no genuine issue of material fact Plaintiff's causes of action for Unfair Trade Practices and Slander of Title. Consequently, Defendant is entitled to summary judgment as to those two causes of action as well. Even to the extent that this Court could determine that the Spring Valley HOA lacks legal authority to issue fines, it should be noted that it has been common practice for the HOA to issue fines since the amendment to the bylaws granting such power was passed in 2004. Further, it has been common practice for HOAs across the state to issue fines, and it has generally been considered a legal and acceptable practice throughout the years. The South Carolina courts have never struck down such a practice, nor has there been any other South Carolina legal authority casting any doubt on

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such a practice. Consequently, to the extent that this Court were to rule that HOAs lack the authority or power to issue fines, it would create liability for HOAs where there was previously none. Thus, any such ruling should have prospective effect only. See, Toth v. Square D Co., 298 S.C.6, 8, 377 S.E.2d 584, 585 (1989) (prospective application of judicial decisions is required when liability is created where formerly none existed).

Unfair Trade Practices

In order to prove a cause of action for unfair trade practices, Plaintiff must prove that Defendant engaged in "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce". S.C. Code Ann. § 39-5-20. Plaintiff has not and cannot come forward with any evidence of any unfair methods of competition. Further, plaintiff has not and cannot come forward with any evidence of any unfair or deceptive acts or practices in the conduct of any trade or commerce. As set forth above, the Plaintiff had legal authority for its actions and followed the procedures set forth in the applicable bylaws, rules and regulations, restrictive covenants and the fine structure. Consequently, there is no genuine issue as to any material fact as to the Unfair Trade Practices Act Claim and Defendant is entitled to Summary Judgment.

Additionally, to prove a violation of the Unfair Trade Practices Act, the allegedly unfair or deceptive acts or practices must occur "in the conduct of any trade or commerce." Id.; Moore v. Williamsburg Regional Hosp., 560 F.3d 166, 178 (4th Cir. 2009). Trade or Commerce is defined by the Act as "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State."

S.C. Code Ann. § 39-5-10. The acts of homeowners association in enforcing the covenants and restrictions were not in the conduct of any trade or commerce because the HOA was not selling or distributing any services or property to Plaintiff. See Moore, 560 F.3d at 199 (hospital's peer review of a doctor is not action taken in the conduct of trade or commerce); Foggie v. CSX Transportation, Inc., 313 S.C. 98, 104, 431 S.E.2d 587, 591 (1993) (railroad company's refusal to reinstall railroad crossing was not the conduct of trade or commerce.) Because the Defendant's actions were not in the conduct of Trade or Commerce, the Unfair Trade Practices Act is inapplicable and Defendant is entitled to summary judgment.

Finally, in order to have a valid claim under the Unfair Trade Practices Act claim, Plaintiff must show that the Defendant's conduct must have an impact upon the public interest, as the "act is not available to redress a private wrong where the public interest is unaffected." Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 457, 478, 351 S.E.2d 347, 350 (Ct. App. 1986). In this case, plaintiff cannot show any impact on the public interest. Rather, Plaintiff knowingly violated the HOA rules and is seeking redress for a fine issued to him. This is simply an attempt to redress an alleged private wrong and has no impact on the public interest. Consequently, the Unfair Trade Practices Act is inapplicable and Defendant is entitled to Summary Judgment as to Plaintiff's Unfair Trade Practices claim.

Slander of Title

In order for Plaintiff to maintain a cause of action for Slander of Title, he "must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the

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property in the eyes of third parties." Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012). In this case, Defendant followed all the conditions in the bylaws, rules and regulations, restrictive covenants and the fine structure in filing the lien. There is no dispute that Plaintiff violated the "for sale" sign restriction and Defendant has the authority under the Bylaws to file the lien to enforce the fine, thus, Defendant had legal justification for filing the lien. Therefore Plaintiff cannot show any false statement of action with malice. Further, plaintiff has not and cannot come forward with any competent evidence of diminished value of his property in the eyes of third parties. Consequently, there is no genuine issue of material fact as to Plaintiff's cause of action for Slander of Title and Defendant is entitled to Summary Judgment.

Lastly, because both of plaintiff's causes of action for monetary damages arise out of the conduct of the Board of Directors and are a direct challenge to the actions of the Board, the Board's actions are governed by the business judgment rule. "In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." Baumann v. Long Cove Club Owners Assn'n, 380 S.C. 131, 138, 668 S.E.2d 420 (Ct. App. 2008) (quoting Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993)). Further, the standard of conduct for directors of nonprofit corporations is statutorily codified. S.C. Code Ann. § 33-31-830. More specifically, S.C. Code Ann. § 33-31-830 provided in relevant part:

SECTION 33-31-830. General standards for directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation who the director reasonably believes is reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and who the director believes is reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

...

As set forth in the Affidavit of Beth Swindler and the meeting minutes attached thereto, the Board of Directors specifically relied upon the advice of legal counsel with

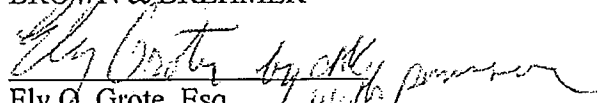
regard to the issuance of the fine and the filing of the lien. Further, the Board of Directors acted in accordance with covenants, bylaws, rules and regulations and restrictive covenants in issuing the fine and filing the lien. Further, the Board acted reasonably and in accordance with long-established practices and industry customs. Consequently, the Board met its standard of care under the Business Judgment Rule and S.C. Code Ann. § 33-31-830, thus Defendant is entitled to summary judgment as to both causes of action for money damages on this ground as well.

V. CONCLUSION

Plaintiff has long stated his disdain for the restrictions on "for sale" signs at Spring Valley. For years Plaintiff has had a methodology at his disposal to alter the enforcement of this rule. Plaintiff could seek redress through the Bylaws including an amendment to the Deed Restrictions or fine structure. Yet he has brought no motions to the Board, taken no actions at meetings and presented no petitions to change the rule. You would think that such an alienation of property rights would have resulted in the widespread support from the general membership of the Spring Valley HOA. But the fact is that the membership likes the current deed restrictions and has voted no less than three times in the last nine years to grant the Board the authority to levy fines for their enforcement.

In sum, for the foregoing reasons, Defendant Spring Valley Homeowner Association's Motion for Summary Judgment should be **GRANTED** and Plaintiff's Motion for Summary Judgment should be **DENIED.**

BROWN & BREHMER

By: 

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Attorneys for Defendant

Columbia, South Carolina
November 8, 2013

EXHIBIT A

Instrument: 2007080145 Book/Page: R 1354 : 253 DateTime: 08/04/2007 12:10:03.670 Document: 02

Book 1354-253
2007080145 08/04/2007 12:10:03.670 Deed
Fee:$10.00 County Tax:$385.00 State Tax:$910.00

2007080145 Richard W. Rodden Richland County ROD

Prepared by, recorded by,
and to be returned to:

The Law Office of Clare H. McLean, P.A.
1404 Laurel Street
Columbia, SC 29201-2516

07RE0618

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State of South Carolina)
)
County of Richland)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Afsaneh Z. Farzam, (hereinafter called "Grantor"), in consideration of Three Hundred Fifty Thousand and 00/100 Dollars ($350,000.00), to the Grantor in hand paid at and before the sealing of these presents, by Coley Brown (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

Coley Brown,

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as Lot Number Nine (9), Block "D" upon a plat of portion of Spring Valley, made by William Wingfield, dated August 29, 1962, revised July 10, 1973 and recorded in the Office of the ROD for Richland County in Plat Book "X", page 9550 and 9550-A; and also being shown and delineated on a plat prepared for Elham Farzam and Afsaneh Z. Farzam by Polson Surveying Co., dated July 28, 1989 and recorded on August 15, 1989 in the Office of the ROD for Richland County in Plat Book 52, page 7176. Said latter plat is specifically incorporated herein and reference is craved thereto for a more complete and accurate description of the premises. Be all measurements a little more or less.

This being the same property conveyed to Afsaneh Z. Farzam by deed of James H. Vonfrank and Gladyanne Vonfrank, dated 08/15/89 and recorded in Deed Book D946, page 243 and by deed of Elaham Farzam, dated 01/04/06 and recorded in Record Book 1139, page 2478.

TMS# 20005-01-23

State of South Carolina
I certify that this is a true and correct copy
Dated: 01-03-13
Register of Deeds
Richland County

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Richland County Register of Deeds
Audited by Paul Brawley 2007

Instrument: 2007030145 Book/Page: R 1354 : 254 DateTime: 09/04/2007 12:10:03.670 Document: 02

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Grantee's Address: 6436 Westshore Drive
Columbia, SC 29206

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever.. And the Grantor do hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hands and seals this the 31 day of August, 2007.

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness

Afsaneh Z. Farzam aka Afsaneh Zand Farzam

witness

Richland County Register of Deeds

Applied by Paul Brawley 2007

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Instrument: 2007080145 Book/Page: R 1354 : 255 DateTime: 09/04/2007 12:10:03.870 Document: 02

State of South Carolina)
)
County of Richland)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that (s)he saw the within-named Afsaneh Z. Farzam aka Afsaneh Zand Farzam sign, seal, and, as his/her/their act and deed, deliver the within-written Title to Real Estate, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 31 day of August, 2007.

(SEAL)
Notary Public for the State of South Carolina
My Commission Expires: 08/14/11

Richland County Register of Deeds

Audited by Paul Brawley 2007

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EXHIBIT B

D 493 PAGE 171

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CANCELLED

MAR 5 2 51 PM '79

INDENTURE made the day hereinbelow stated, by and between PINE SPRINGS, INC., a Corporation duly organized and existing under the laws of the State of South Carolina, hereinafter called the GRANTOR, which expression shall include its successors and assigns, where the context so requires or admits, of the one part, and GOODWIN CONSTRUCTION, INC., hereinafter called the GRANTEE, which expression shall include its successors and assigns where the context so requires or admits, of the other part; and in this agreement the singular shall include the plural, and any gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained the sum of SIXTEEN THOUSAND, NINE HUNDRED TWENTY AND NO/100 ($16,920.00)- - - - DOLLARS paid to the GRANTOR by the said GRANTEE, the said GRANTOR has granted, bargained, sold and released, and by these presents, grants, bargains, sells and releases unto the said

GOODWIN CONSTRUCTION, INC.

All that certain piece, parcel or lot of land, situate, lying and being on the subdivision known as "Spring Valley", about ten miles Northeast of the capitol of the City of Columbia, in the County of Richland, State of South Carolina, and being shown and designated as Lot No. 9, Block "D" on Plat of Lots 9 & 10, Block "D", Spring Valley, prepared by William Wingfield, Reg. Surveyor, dated December 8, 1971 and recorded in the Office of the R.M.C. for Richland County in Plat Book Y, at page 3796. Said property being bounded and measuring as follows: On the Northeast by Northlake Road, as shown on said plat, whereon it measures One Hundred Fifty-five and nine-tenths (155.9') feet, more or less; on the Southeast by Spring Valley Road, as shown on said plat, whereon it fronts and measures Two Hundred (200') feet, more or less; on the Southwest by Lot No. 10, Block "D", as shown on said plat, whereon it measures One Hundred Eighty nine (189') feet, more or less; and, on the Northwest by Lots Nos. 7 and 8, Block "D", as shown on said plat, whereon it measures Two Hundred Thirty-nine (239') feet, more or less.

This being a portion of the same property heretofore conveyed to grantor by Master's Deed, Jasper N. Cureton, as Master in Equity for Richland County, dated June 23, 1977 and recorded in the Office of the R.M.C. for Richland County in Deed Book D-466, at page 522.

SOUTH CAROLINA DOCUMENTARY TAX COUNTY 18.70

Grantee's Mailing Address: 6000 #1, Box 327
Chapin, South Carolina 29036

This conveyance is made subject to the following conditions, covenants and restrictions:

(1) By acceptance of this deed, the GRANTEE covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association and will abide by its duly enacted rules, regulations and by-laws, and that GRANTEE will pay to the Association the periodic assessment due the Association for the purposes of

State of South Carolina
I certify this is a true and correct copy.
Dated 11-03-13

- 1 - D 493 PAGE 171

1-3-5-79

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maintaining and repairing the roads, streets, parks and other common areas which are the property of the Association and for providing private security protection to the owners of property in Spring Valley. The amount of such assessment and the method of handling said payments shall be determined by the By-laws of the Association as duly adopted from time to time, a current copy of which shall be furnished upon request. GRANTEE___ agrees that such periodic assessments shall constitute a lien upon the property, subject and junior to the rights of all first mortgagees to the rights of the holder of any mortgage securing a purchase money obligation for the purchase of or an interest in any improved or unimproved lot to which such assessment related and to the rights of the holder of any mortgage securing an obligation incurred in connection with the installation or construction of permanent improvements upon the lot to which such assessment relates as well as a personal obligation of GRANTEE___ and every succeeding owner.

(2) No structure shall be erected on this lot other than one single family dwelling and detached or attached garage of similar design, including servants' quarters, if desired; and no use shall be made of the property, or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family.

(3) No lot referred to herein shall be subdivided or reduced in size without the written consent of the GRANTOR.

(4) No noxious or offensive activity shall be carried on upon this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No hogs, goats, poultry, cows, or horses which shall constitute a nuisance or cause unsanitary conditions, or any undesirable situation to any neighboring property, shall be maintained on this lot; and nothing shall be done, or any condition permitted on said lot which shall pollute the water of any lake, stream or pond in or near Spring Valley Estates.

(5) No temporary structure or garage apartment shall be erected upon this lot.

(6) An easement is reserved unto the GRANTOR herein over five feet along each side line of each lot and over the front five feet and rear ten feet of each lot for utility installation, utility rights-of-way and maintenance thereof, as well as drainage installations, drainage rights-of-way and maintenance thereof.

(7) All sewer disposal shall be through private, individual septic tanks approved by the State Department of Health or collection sewer lines to be installed by the GRANTOR herein, as approved by the Board of Health and through outfall lines to be installed by the City of Columbia, in cooperation with land owners on the Crane Creek watershed, or through the outfall lines now installed, and to be installed, by the East Richland County Public Service District, or such other sewer disposal system as may be installed and approved by the State Board of Health. A reasonable sewer connection charge of $ 250.00 will be required at the time of each tap, and a reasonable monthly sewer fee will be charged based upon the cost of operating the sewer system.

(8) No building, fence, or other structure of any kind shall be erected, placed or altered on the lot hereby conveyed until the building plans, specifications, design and plot plan showing the location of the building, fence or structure on this lot have been approved by the GRANTOR, its successors or assigns, in writing, as to conformity in size, type and quality, and as to location of the building, fence or structure with respect to topography and finished ground elevation.

(9) If the lot hereinabove described borders on a pond or lake, then the GRANTEE'S use of the pond or lake shall be limited strictly to such purposes as may be authorized in writing, by GRANTOR, its successors or assigns, and in the event of any damage or other need for repairs to the dams hereafter, the cost of repairs shall be borne by the bordering property owners of a pro-rata front foot basis. The use of motor boats on any of the lakes or ponds is to be prohibited unless authorized by the GRANTOR, the Spring Valley Country Club and a majority of the property owners owning property on the lake or pond.

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(10) It is understood and agreed between the parties hereto that the hereinabove described property is sold as is and GRANTOR shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of streets after said streets have been dedicated to the County or conveyed to the Spring Valley Homeowners Association.

(11) Except as specifically provided for in this paragraph, no "SALE" or "RENT" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:

(a) Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon not more than two (2) "For Sale" signs only (the size and content of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.

(b) After the first sale of a lot with a dwelling thereon no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by Spring Valley Homeowners Association, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.

(c) No sign shall ever be nailed or fastened to any tree at any time.

(12) No clothes lines, exposed garbage containers or other unsightly objects are to be erected or used on the property except where they are screened from the streets, lakes, adjoining properties or general view.

(13) No trucks or commercial vehicles or commercial equipment of any kind are to be garaged or stored on the lots.

(14) If any sentence, clause or paragraph of this agreement shall be found by a Court of competent jurisdiction to be invalid or unenforceable, it shall in no way affect the validity or enforceability of any other sentence, clause or paragraph hereof.

AND IT IS UNDERSTOOD AND AGREED that the said conditions, covenants and restrictions shall be appurtenant to and run with the same premises; and that in the event of the violation of any of the said conditions, covenants and restrictions, the said GRANTOR, its successors or assigns, shall have the right, jointly or severally of abatement and to enforce compliance by injunction of any other appropriate legal action. It is further understood and agreed that requirement to pay the periodic assessments of Spring Valley Homeowners Association shall run with the land and bind GRANTEE, its heirs, successors and assigns.

TOGETHER with, all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Goodwin Construction, Inc., its successors, heirs and assigns forever.

And the said GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singuler the said premises unto the said Goodwin Construction, Inc., its successors and assigns, against itself and its its successors and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

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IN WITNESS WHEREOF, the GRANTOR and the GRANTEE(S) have caused these presents to be executed and delivered and their respective seals hereunto affixed this 1st day of March, in the year of our Lord One Thousand Nine Hundred and seventy-nine, and the two hundred and second year of the sovereignty and independence of the United States of America, execution of behalf of GRANTOR being by its heretofore duly authorized officers named below.

Signed, Sealed and Delivered in the Presence of:

Mabel N. Quattlebaum

T. Edward Cooper

PINE SPRINGS, INC.

By: Robert W. Cooper
President

(CORPORATE SEAL)

Attest: James D. Cooper
Secretary

GRANTOR

Victoria C. Chappell

Mabel N. Quattlebaum

GOODWIN CONSTRUCTION, INC. (L.S.)

By: [signature] (L.S.)
President

GRANTEE(S)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Before me, the undersigned Notary Public for South Carolina, personally appeared T. Edward Cooper, and made oath that s/he saw the above named PINE SPRINGS, INC., by Robert W. Cooper, its President, and James D. Cooper, its Secretary, sign, seal and as the act and deed of the said Corporation, deliver the within-written deed for the uses and purposes therein mentioned, and that s/he with Mabel N. Quattlebaum witnessed the execution and subscribed their names as witnesses thereto.

SWORN TO and subscribed before me this 1st day of March, 19 79.

T. Edward Cooper

Mabel N. Quattlebaum (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: Feb. 18, 1980.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Before me, the undersigned Notary Public for South Carolina, personally appeared Victoria C. Chappell, and made oath that she/he saw the above named Goodwin Construction, Inc. by its President, sign, seal and as its act and deed, deliver the within-written deed for the uses and purposes mentioned therein, and that she/he with Mabel H. Quattlebaum witnessed the execution thereof and subscribed their names as witnesses thereto.

SWORN TO and subscribed before me this 1st day of March, 1979.

Victoria C. Chappell

Mabel H. Quattlebaum (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: Feb. 10, 1980.

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EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff,	)	Civil Action No.: 2012-CP-40-6974
v.	)	**AFFIDAVIT BETH SWINDLER**
Spring Valley Homeowners Association, Inc., Defendant.	)	

Personally appeared before me Beth Swindler, who, first being duly sworn, deposes and says as follows:

1. I am the Administrator of the Spring Valley Homeowners Association, Inc. (the HOA). I have been the administrator for 9 years.
2. As part of my responsibilities as administrator I am aware of the actions taken by the Board of Directors of the HOA (the Board) over the years including the enforcement of the Covenants and Restrictions and Bylaws of the HOA.
3. As part of my responsibilities as administrator for the HOA I attend all HOA meetings and Board meetings. I am custodian of the records of these meetings including the mailing of notices and the distribution and availability of minutes.
4. To my knowledge all of the Bylaws and Amendments to the Bylaws have duly presented and properly adopted by a legal vote of the members of the HOA.
5. The up to date applicable Amended Bylaws have been available to all owners of property in the Spring Valley subdivision.
6. The Covenants and Restrictions governing the restriction on signage at Spring Valley have been in place since at least 1979.

7. Thousands of houses have been bought and sold over the years in the Spring Valley subdivision subject to the restrictions on for sale signs.
8. Plaintiff has known about the restrictions against signage for at least five years as he raised the issue that there are no "For Sale" signs allowed in Spring Valley at an annual meeting of the HOA on November 11, 2008 and again on November 10, 2009. A copy of the aforementioned Annual Meeting Minutes are attached as **Exhibits 1** and are incorporated herein by reference.
9. To my knowledge the Board has consistently enforced the restriction on "for sale" signs and has not knowingly acquiesced to or overlooked homeowner violations of this deed restriction.
10. To my knowledge the Board has acted upon every instance of which they were aware to actively enforce the Deed Restriction against "for sale" signs in the Spring Valley subdivision.
11. The Amendments to the Bylaws authorizing the Board to issue fines against the members for certain violations of the Deed Restrictions have been in place since November 8, 2004.
12. The up to date By-Laws of the HOA have always been kept and available for review or copy by any Member of the HOA upon reasonable request. Also, since 2010 the Bylaws have been posted on the Spring Valley website for everyone including the general public. A copy of the Information Guide containing the covenants and restrictions, the bylaws, the fine structure, and the rules and regulations is attached at **Exhibit 2**. This Information Guide is available to all HOA members and the general public and is updated as any changes are made to the bylaws, the fine structure, and/or the rules and regulations.
13. The Bylaws, including all amendments thereto, authorizing the Board to issue fines against the members for certain violations of the Deed Restrictions, were voted upon and duly

authorized by the Members of the HOA at properly noticed Annual Meetings of the HOA and were validly adopted.

14. The Bylaws, authorizing the Board to issue fines against the members for certain violations of the Deed Restrictions, have been amended and subject to vote of the members of the HOA on November 15, 2005, November 12, 2007, and November 9, 2010. A copy of the Annual Meeting Minutes from November 12, 2007 and November 9, 2010 are attached as **Exhibit 3** and incorporated herein by reference.

15. The Members of the HOA were given proper notice of the annual meetings where the current fine structure was discussed, voted upon and authorized by the Members of the HOA. A copy of the notices for the November 12, 2007 and November 9, 2010 annual meetings are attached as **Exhibit 4** and incorporated herein by reference.

16. All Members of the HOA have been provided copies of the Amended Bylaws as they have been adopted.

17. Without seeking prior approval from the HOA Board, Plaintiff placed a "for sale" sign on his property in violation of the deed covenants and restrictions. On October 4, 2011, Carl Voges, the General Manager of the HOA, advised Plaintiff in writing of his violation and advised that he had 15 days to remove the sign and that the fine schedule for the violation would begin to run if the sign was not removed by October 19, 2011. On October, 20, 2011, Carl Voges notified Plaintiff in writing that the fine schedule had begun concerning his violation of the deed covenants and restrictions. On October 23, 2011, Plaintiff's counsel wrote Carl Voges contesting the fine schedule and requesting that had hardship determination be made. On November 7, 2013, counsel for the Spring Valley HOA advised Plaintiff's counsel that the HOA Board would hear him concerning his hardship request on December 8, 2011. A copy of correspondence in the possession of the HOA concerning

Plaintiff's placement of a "for sale" sign is attached as **Exhibit 5** and incorporated herein by reference.

18. The "for sale" sign was removed by Plaintiff in late November 2011 or Early December 2011 after he secured a renter for his property.

19. On December 8, 2011, Plaintiff's hardship request concerning the placement of a "for sale" sign was considered by the HOA Board. At the meeting, Plaintiff admitted that no "for sale" signs are permitted without prior approval of the Board and that he never obtained prior approval. The HOA board sought legal advice from its counsel, Harry Goldberg of the Finkel Law Firm, concerning the authority of the HOA to levy fines. Upon advice of counsel concerning the authority of the HOA to levy fines, the Board voted to impose/uphold a $500 fine against plaintiff for his violation of deed covenants and restrictions. A copy of the December 8, 2011 Meeting Minutes are attached as **Exhibit 6** and incorporated herein by reference.

20. At the February 23, 2012 HOA Board meeting, the HOA Board voted to hire the Finkel Law Firm to pursue collecting the fine levied against Plaintiff after he failed to pay the fine. A copy of the February 23, 2012 meeting minutes are attached as **Exhibit 7** and incorporated herein by reference.

21. The Finkel Law Firm pursued collecting the fine levied by the HOA Board, including the filing of a lien against plaintiff's property. The lien was signed by the HOA President, Rodney Spivey, upon the request, direction and advice of legal counsel. A copy of relevant meeting minutes concerning filing the lien are attached as **Exhibit 8** and incorporated herein by reference.

22. The lien on Plaintiff' property was filed on September 13, 2012 and a copy of the lien is attached as **Exhibit 9** and incorporated herein by reference. The lien was subsequently

removed from Plaintiff's property by counsel for the HOA and there no longer exists any lien against Plaintiff's property by the HOA.

23. The records produced by the Spring Valley Homeowners Association in this action are the records kept by the HOA in its ordinary course of business and are authentic and accurate copies of those records.

Further Affiant sayeth not.

Beth Swindler

SWORN before me this
11 day of November, 2013
Notary Public for South Carolina
My Commission Expires 04/12/16

EXHIBIT 1

to Affidavit of Beth Swindler

SPRING VALLEY HOMEOWNERS ASSOCIATION

Annual Membership Meeting
November 11, 2008

President Ray Robinson called the Annual meeting of the Spring Valley Homeowners Association to order at 7:13 PM. Board members present were Lu Armstrong, Rodney Spivey, Russ Templeton, Susan Hamilton, Harry Goldberg, Sandra Matthews and Linda Stern. Others included Carl Voges, Manager, Beth Swindler, Administrator and Ed Moon and Joe Roddey, Spring Valley Country Club President.

Approve By-Law Change for Date and Time of Meeting, Ray Robinson
Motion made by Skip Kugler. Seconded John Uhl. Motion Approved.

Review of Agenda, Approval Requested
President Robinson added new item under new business, a proposal by Mr. Davis

Introduction of Visitors, Ray Robinson
Bill Simpson, Parliamentarian
Bill Cotty, Former Representative
Senator Joel Lourie
Dr. Marie Price, Principal Lonnie B Nelson
Gregg Hyatt, Sizemore Security
Kim Berry, Sizemore Security
Major Danny Chavis, Sizemore Security
Sargent Rick Tallent, Sizemore Security
Captain Cole Porter, Richland County Sherrifs Department

Presentation of Distinguished Service Award by President Robinson to Mr. Ed Moon
President Robinson thanked Mr. Moon for his many years of service to the Spring Valley Homeowners Association.

Minutes of 2007 Annual Meeting, Approval Requested
Motion made by Rodney Spivey, Seconded by Mr. Bill Simpson. Motion Approved.

Committee Reports
President Robinson introduced the Association Board Members, each who reviewed their reports, which where attached in the agenda.

Architectural Committee, Russell Templeton

Security Committee, Rodney Spivey
Rodney presented powerpoint presentation which summarized his first year as Security Chairperson and future goals for 2009. The 2008 Crime Summary is attached. Rodney turned his presentation over to Captain Cole Porter of the Richland County Sheriffs Department, which reviewed the crime statistics of Spring Valley verses the other surrounding neighborhoods. In the13 month time period

Captain Porter reviewed, the following incidents were reported: 54 for Spring Valley, 277for Wildewood and 72 for Long Creek Plantation. Captain Porter commented

*Polly Anna Davis: Asked if security could make residents to park on proper side of street. Says dangerous and she has issues dodging these cars when driving through neighborhood.
*Rodney Spivey: Please call security when incident occurs and they will address.

*Voney Vaughn: Does lighting fall under security?
*Rodney Spivey: Currently falls under roads committee but will be sure it is assigned to someone. Please report areas where lights are burned out.

Lakes Committee, Susan Hamilton

Grounds Committee & Keep Spring Valley Beautiful, Linda Stern
Thanked Tammy DeBorde for being the new Welcome Committee Chairman and thanked outgoing Chairperson Martha Hopkins for her dedicated service.

Roads and Storm Drains, Ed Eargle
*Paul Spencer: How many miles of roadway are in the subdivision?
*Ray Robinson: over 20 to 25 miles and an 8-mile perimeter. 20-year plan calls for paving 1 mile of road per year.

Spring Valley Country Club, Joe Roddey
Joe gave an update on the status of the club. Joe wanted to dispel some of the rumor that were floating around about the club being in trouble and stated that the club has balanced their budget and has a plan to pay off debt. Joe also stated how important it was for the neighborhood and the club to work together for the future of both.

*Brooks Jones: Made statement of how important it was for residents of Spring Valley to support the club. Less than 10% of residents of neighborhood are members. Made example of how the home property values have fallen in Coldstream and Crickentree since their golf courses went public.

Treasurer's Report, Sandra Matthews
Report Attached. Sandra thanked Beth for all of her work during the year.

2009 Budget Vote, Approval Requested
Motion to approve by John Bannister, Second by John Uhl. Motion Approved.

Election of New Board Members, Ray Robinson
President Robinson presented the three nominees which where, Susan Hamilton Renee Gardner and Harry Goldberg.

Ray asked for any nominations from the floor, there were none. Ray asked to move to approval of new board members.

Mac McIlroy made motion to elect all three nominations by acclamation. Motion seconded by Mr. Bill Simpson. Motion Approved.

For information: 234 Proxies were received by the Association and were fairly uniformly 92% in favor of the resolutions.

New Business

Announce 2009 Nominating Committee, Ray Robinson

The new nominating committee Chairman will be Harry Goldberg. Harry will choose additional members for his committee after the holidays. President Robinson encouraged anyone who was interested in serving to contact Mr. Goldberg.

Proposed By-Laws Changes, Unsightly Conditions, Ray Robinson

*Mary Chambers: Asked why home up keep is not included in the unsightly conditions.

*Ray Robinson: Stated that home up keep was included and stated that the manager will contact the resident if home up keep is an issue.

*Jim Andreen: Expressed his concern that the way the bylaw is written does not add any "teeth" to what is currently written. Just explains what written.

*Coley Brown: Stated his concern that there are no "For Sale" signs allowed in Spring Valley.

*Brooks Jones: Stated that two of the most prominent real estate agents in the area stated to him that they also agreed that the no "For Sale" signs were an issue.

*Nancy Nankik: Stated that real estate agents told her the exact opposite

*Michelle Nicholson: Talked about reaching out to some of the older residents in the community that can't maintain their property.

Motion to adopt the by law by John Bannister, Second by Bill Simpson.
President Robinson asked for further discussion.

Gordon Maynes: stated that he felt the board was doing a good job with current regulations and would like to leave the current rules and regulations as is.

Walt Canfield: Agreed with Mr. Maynes statement and said that the added language just made rule confusing.

Tom Silvester: Was concerned with the statement regarding keeping yards free of leaves and thought was rather heavy handed.

With no further discussion, President Robinson called for a vote. Motion passes.

President Robinson introduced Mr. Tom Davis of 5 Sweet Gum Court who asked to present the following motion to the homeowners.

Mr Tom Davis moved that the homeowners of Spring Valley instruct the property manager to expedite the clearing of the storm water drainage pipe that serves Sweet Gum Court in order to prevent further soil erosion and damage to the Davis property at above address.

John Bannister: Asked what is the association planning to do to fix this problem?
Ray Robinson: Said he supports Mr. Davis' request.

Ross Lynch: Asked if there any other areas of Spring Valley with this much of a drainage problem? Why are we not prioritizing these projects?

Ray Robinson: Budget for storm water drainage increased to $45,000.

Mr. Tom Davis moved that motion be adopted, motion seconded by Mr. Howie Davis Motion approved.

Motion to adjourn made by Sandra Matthews. Seconded by Lu Armstrong

Meeting Adjourned at 8:44pm

Respectfully submitted, Lu Armstrong, Secretary

SPRING VALLEY HOMEOWNERS ASSOCIATION

Annual Membership Meeting
November 10, 2009

President Ray Robinson called the Annual meeting of the Spring Valley Homeowners Association to order at 7:02 PM. Board members present were Rodney Spivey, Russ Templeton, Susan Hamilton, Harry Goldberg, Sandra Matthews, Renee Gardner and Linda Stern. Also present were the General Manager, Carl Voges, Administrator, Beth Swindler, Board Advisor, Ed Moon and Parliamentarian, Bill Simpson.

Review of Agenda, Approval Requested
No changes were requested and the Agenda was approved as published.

Introduction of Visitors, Ray Robinson
Gregg Hyatt, Sizemore Security
Kim Berry, Sizemore Security
Major Danny Chavis, Sizemore Security
Captain Cole Porter, Richland County Sheriff's Department

Minutes of 2008 Annual Meeting, Approval Requested
Motion made by John Uhl, 10 Westlake Road. Second by Ed Eargle, 43 Northlake Road. Minutes accepted.

Committee Reports
President Robinson introduced the Association Board Members and referred to the Committee Reports in the meeting handout information. He asked Rodney Spivey to present the Security Report, Renee Gardner to elaborate on Roads and Storm Drains, and Sandra Matthews to review the Treasurer's Report and Proposed Budget. He welcomed any questions regarding any other Committee Report. With none appearing, Mr. Spivey presented a Power Point presentation for Security (copy attached to permanent record). Mr. Spivey thanked the Sizemore Security Management and Major Chavis for meeting the challenge to improve security in Spring Valley and cited an overall decrease in specific reporting areas with the exception of Vandalism, an increase attributed to a rash of juvenile paintball damage in the Spring. Mr. Spivey outlined the 2010 Security Objectives of:

1. Continued Zone Patrolling Strategy
2. Strategize to decrease larceny.
3. Continue to enforce traffic violations.
4. Continued coordination with Richland County Sheriff's Department.

Annette Carlton of 118 Spring Valley Road asked what items are being taken (stolen). Mr. Spivey responded that primarily lawn equipment is being removed from garages. Money, GPS systems, laptop computers and other loose valuables are being taken from unlocked vehicles.

Carol McMahon, 105 Camberley Court asked if the paintball offenders were ever identified. Mr. Spivey said the identity of the paintball offenders was not known. However, the activity stopped after the reporting of the problem in the newsletter.

David Massey of 101 Kerryton Road commended Security on doing a good job. He also noted that the Crown Victoria patrol car sounds as if the engine is surging. Robbie Robertson of 300 Park Shore Drive East also noted the abnormal engine noise. Mr. Spivey responded that he is aware of the engine condition and the fact that the patrol car is nearing the end of usefulness.

Renee Gardner reviewed the Roads and Storm Drains report that was included in the meeting material. She noted that the Board's goal of patching and resurfacing 1.5 miles of asphalt per year had been exceeded in 2009. Through careful planning with the Roads Consultant, Mr. Robert Dickinson, 2.9 miles of roads were patched and/or paved. Mr. Dickinson's annual contract was renewed in April, 2009. Also noted was the delay in completion of the 2009 Drainage Correction Contract due to Richland County regulations for waste disposal. The contract will be resumed in 2010. Several small drainage repairs were completed. Additionally, the inlet to Lower Flora Pond will be cleared.

John Roberts of 224 Valley Springs Road noted utility work in process on Valley Springs. Carl Voges, the General Manager, responded that SCE&G has been installing natural gas lines.

Lee Thomas of 225 Spring Valley Road asked about the absence of blue markings on fire hydrants. Carl Voges replied that the City of Columbia has found it is not cost effective to maintain the blue markers. They are converting to a GPS system.

President Robinson noted the Architectural Committee has approved routine requests for fencing or home improvements over the year. With only a few lots remaining, there are fewer architectural requests than there historically were.

Special Vote of Thanks to Linda Stern

President Robinson introduced a special vote of thanks to Keep Spring Valley Beautiful Chair, Linda Stern, for her dedication to improving the many common areas of Spring Valley over the last four years. The quality of the appearance of all Spring Valley's entrances and most recently the fountain circle in front of the Country Club is a legacy that Linda leaves for the community to enjoy, maintain and build upon.

Spring Valley Country Club Board Member, Darren Foy, reported the Club has gone through many transitions. Nationally, the recession has caused membership in many clubs to decline. Spring Valley Country Club also lost a number of members in the Fall. Currently there are 325 members. However the Club has been able to continue to improve upon the facility and grounds, including the hiring of the new Groundskeeper, Chris McKenzie. The Club encourages Spring Valley residents to join and is making special membership offers. Currently a special offer is available waiving the initiation fee and charging reduced

introductory rates. The Summer Pool Membership was successful and will be offered again from Memorial Day through Labor Day in 2010.

The Treasurer's Report and Proposed 2010 Budget were presented by President Robinson. He asked Treasurer Matthews to address specific line item questions.
Jim Crosby of 205 Spring Valley Court asked how much money is anticipated to be in the Reserves at the end of the fiscal year. The Treasurer responded that the historical goal is to maintain an amount equivalent to six months of assessments. President Robinson added that the current balance is $521,980, which is $70,000 more than last year's reserve. The reason for this increase is the collection of $39,000 more assessments than budgeted and the $30,000 storm drain projects that were delayed.

Bob Jones of 5 Maple Spring Court said we normally receive a balance sheet. Why was that not included? Treasurer Matthews replied that we do not routinely provide the balance sheet yet it is available to any homeowner who requests it.

2010 Budget Vote
Motion made by John Uhl, 10 Westlake Road, to accept the Proposed 2010 Budget. Second by Paul Johnson, 104 Park Shore Drive West. Budget adopted unanimously.

Election of New Board Members, Ray Robinson
Harry Goldberg presented the Nominating Committee Report and introduced the candidates Rodney Spivey, Paul Spencer, and George Johnson. President Robinson called for nominations from the floor. With none appearing, motion was made by Skip Kugler, 2208 Bee Ridge Road, to accept the slate of candidates. Second by John Uhl, 10 Westlake Road. Motion to elect Rodney Spivey, Paul Spencer and George Johnson passed unanimously.
John Bannister of 93 Old Springs Road thanked all of the Board Members for serving, including those going off the Board, especially Linda Stern who has done so much for the community. Mr. Bannister also offered special thanks to Ray Robinson for serving two years as President.

New Business
Announce 2010 Nominating Committee, Ray Robinson
The new Nominating Committee Chair will be Renee Gardner. Additional members for the Committee will be named after the holidays. President Robinson encouraged anyone who was interested in serving to contact Ms. Gardner.

Proposed By-Laws Changes, Fence Maintenance, Ray Robinson
President Robinson reviewed the proposal included in the meeting material and clarified the purpose as a measure to require homeowners to maintain the fence in good condition, including repairs to any damaged or fallen sections of fencing. Motion made by Bill Simpson, 304 West Springs Road, to adopt the proposal. Second by John Uhl, 10 Westlake Road. Motion passed unanimously.

Coley Brown, 118 Spring Valley Road, recited the 2008 discussion of the prohibition of "For Sale" signs in Spring Valley. President Robinson explained the Board's limitation in

changing the deed restriction prohibiting signs but would ask the 2010 Board to review the subject. Fred Beachum of 301 Valley Springs Road commented that he believed a "For Sale" sign is not the remedy as price and features are the solutions for the successful sale of a home in the current market.

S. L. "Scrappy" Stark, of 3 Glenlake Road, noted the By-Laws provision for unsightly homes and asked if there is a similar provision for lots. President Robinson stated that the same provision applies to lots. He announced the intention to create a new Board Committee to oversee Compliance issues in 2010.

For information: 224 Proxies were received by the Association. The Board did not evoke the right to include the proxies tally for matters requiring approval.

Motion made by Bob Jones, 5 Maple Springs Court, to adjourn. Second by Zeke Montgomery, 9 Poplar Springs Court. Meeting adjourned 8:15PM.

Respectfully Submitted,

Beth Swindler
Acting Secretary

EXHIBIT 2

to Affidavit of Beth Swindler

Information Guide

Deed Restrictions & Covenants

Spring Valley
Homeowners Association
January, 2011

We are delighted to have you as part of our community. As a property owner you are automatically a member of the Spring Valley Homeowner's Association. The Association is managed by an all volunteer Board and is ready to assist you within reasonable limits.

The strength of our community is a common desire to keep a pleasant and safe neighborhood, neat landscapes, clean streets and stable property values. We need your help to accomplish these objectives. This informational guide will give you answers to many of the questions you may have regarding your rights and responsibilities as a Spring Valley Homeowner. If you have further questions or require clarification, please contact the Association Manager or a member of our volunteer Board of Directors.

Section I. *History and Deed Restrictions*	*Page 1*
Section II. *Security and Safety*	*Page 7*
Section III. *By-Laws*	*Page 10*
Section IV. *Rules and Regulations*	*Page 22*
Section V. *Questions and Answers*	*Page 26*
Street References	*Page 33*
Map of Spring Valley	*Back Cover*

History

Spring Valley Subdivision and Spring Valley Country Club were developed by Mr. Edwin Cooper through Pine Springs Inc. in the early 1960's. Mr. Michael J. Mungo, through Spring Valley Associates, developed tracks known as Flora Tract I & II beginning in 1976. Later, Spring Valley was expanded by extending East Springs Road (Section 12) and West Springs Road (Section 16). Old Spring Valley expanded with the addition of patio homes (Section 14); Sweet Gum (Section 15); Camberely Court, Enlow Court, Briarberry Road, and Wild Cherry Road Section 10). In 1976 the Spring Valley Homeowners Association was established by the residents. The residents accepted title to the roads, lakes, dams, spillways, parks, and common areas. This transfer gave the Spring Valley Homeowners Association the exclusive right to assess property owners in Spring Valley for the cost maintenance and security.

Three of the early residents who provided leadership and long-term support to the Spring Valley Homeowners Association are recognized by bronze plaques in the Honor Garden near the main entrance. They are Major General Roger K. Rhodarmer who was the founding President and advisor to the Board of Directors until his death in 2001, Mrs. Roberta Dunn who was a founding director and the Administrative Manager until her death in 1999, and Colonel John O. Scullion, a founding director, who later maintained the common areas until shortly before his death in 1998.

2

Assessments

The indenture entered into between Pine Springs, Inc. and the Spring Valley Homeowners Association and between the Spring Valley Associates and the Spring Valley Homeowners Association assigns to the Spring Valley Homeowners Association the exclusive right to assess and collect from the property owners in Spring Valley charges for maintenance, repairs and security. These charges cover road and common area maintenance, security services and administrative costs. Bills are sent quarterly and are due on the first day of the quarter. Finance charges on past due accounts will be added as indicated on statement.

Deed Restrictions

You should have received the Indenture when you received the deed to your property. The Indenture imposes certain restrictions on the use of your property. You should read these deed restrictions carefully. They have a solid legal foundation in South Carolina. On August 17, 1977 the South Carolina Supreme Court ruled that deed restrictions are property and their violation is damage to property, thus making the violator subject to payment for damages incurred. Avoid this by adhering closely to your deed restrictions, thereby avoiding damage to your neighbors' properties and helping to maintain property values.

The following paragraphs are quotes of restrictions in Spring Valley from various deeds:

(a) By acceptance of this deed, the GRANTEE covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association, hereinafter referred to as SVHA, and will abide by its duly enacted rules, regulations and by-laws, and the GRANTEE will pay to SVHA the periodic assessment due SVHA for the purpose of maintenance of the streets, roads, storm drains, common properties of SVHA, security services and other items determined by the by-laws of SVHA as duly adopted from time to time, a current copy of which shall be furnished upon request. GRANTEE agrees that such periodic assessments shall constitute a lien upon the property, subject and junior to the rights of all first mortgages, to the rights of the holder of any mortgage securing a purchase money obligation for the purchase of or an interest in any improved or unimproved lot to which such assessment related, and to the rights of the holder of any mortgage securing an obligation incurred in connection with the installation or construction of permanent improvements upon the lot to which such assessment relates, as well as personal obligation of GRANTEE and every succeeding owner.

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Deed Restrictions (cont.)

(b) No structure shall be erected on this lot other than one single family dwelling and detached or attached garage of similar design, including servants' quarters, if desired; and no use shall be made of the property, or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family.

(c) No lot referred to herein shall be subdivided or reduced in size without the written consent of the GRANTOR.

(d) No noxious or offensive activity shall be carried on upon this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No hogs, goats, poultry, cows, or horses which shall constitute a nuisance or cause unsanitary conditions, or any undesirable situation to any neighboring property, shall be maintained on this lot; and nothing shall be done, or any condition permitted on said lot which shall pollute the water of any lake, stream or pond in or near Spring Valley Estates.

(e) No temporary structure or garage apartment shall be erected upon the lot.

(f) An easement is reserved unto the GRANTOR herein over five feet along each side line of each lot and over the front five feet and rear ten feet of each lot for the utility installations, utility rights-of-way and maintenance thereof, as well as drainage installations, drainage rights-of-way and maintenance thereof.

(g) All sewage disposal shall be through the sewer lines and plant to be provided by the developers or the East Richland County Public Service District, and no septic tanks shall be permitted except by separate agreement of the seller and approval of the Department of Health and Environmental Control.

(h) No building, fence, or other structure of any kind shall be erected, placed or altered on the lot hereby conveyed until the building plans, specifications, design and plot plan showing the location of the building, fence, or structure on this lot have been approved by the GRANTOR herein, in writing, as to conformity in size, type and quality, and as to harmony of design with existing structure with respect to topography and finished ground elevation.

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Deed Restrictions (cont.)

(i) If the lot hereinabove described borders a pond or lake, then the GRANTEES use of the pond or lake shall be limited strictly to such purposes as may be authorized in writing by the grantor, and in the event of any damage to the dams after the year, 1965, the cost of repairs shall be borne by the bordering property owners on a pro-rate front foot basis. The use of motor boats on any of the lakes or ponds is to be prohibited unless authorized by the GRANTOR, the Spring Valley Country Club and a majority of the property owners owning property on the lake or pond.

(j) It is understood and agreed between the parties hereto that the hereinabove described property is sold as is and GRANTOR shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of streets after said streets have been dedicated to the county.

(k) Except as specifically provided for in this paragraph no "Sale" or "Rent" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:

1. Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon, not more than one (1) "For Sale" sign (the size and contents of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.

2. After the first sale of a lot with a dwelling thereon, no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by SVHA, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.

3. No sign shall ever be nailed or fastened to any tree at any time.

(l) No clothes lines, exposed garbage containers or other unsightly objects are to be erected or used on the property except where they are screened from the streets, lakes, adjoining properties or general view.

(m) No camper trailers, travel trailers, trucks, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles or commercial equipment of any kind are to be garaged or stored on the lots.

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Deed Restrictions (cont.)

(n) The lot herein described adjoins a proposed golf fairway including tee and green designated as fairway number ___. It is agreed that such fairway may become a part of the Spring Valley Country Club's golfing facility under an agreement between Pine Springs, Inc. and Spring Valley Country Club, and in such event, the property so designed will be conveyed to Spring Valley Country Club for exclusive use of its members and guests as a part of the club's golfing facilities. Until such property is conveyed to the Club, it will be held by the GRANTOR as open space for the exclusive use of GRANTOR and the owners of adjoining lots, subject to such restrictions as grantor may impose to prevent littering, abuse, trespassing, unleashed animals, or motor vehicles of any kind, or other activities which may be an annoyance or nuisance to any of the adjoining property owners. No building, playgrounds or picnic facilities or other structures shall be constructed on the property and no other use shall be made thereof unless agreed, in writing, by GRANTOR herein and the owners of a majority of the lots adjoining such property. In any event, GRANTOR agrees to maintain the property as open space for a period of fifteen (15) years from December 1, 1969, or until Spring Valley Club elects to construct the golf course, whichever occurs first.

The following paragraph relating to Block Park was not numbered in the deed. The lake referred to is Park Shore Lake.

(o) The lake front property owners, together with their immediate families and house guests, are to have the privilege of using the entire lake for swimming, boating and fishing, subject to rules, regulations and prohibitions approved by a majority of the owners of the property bordering on the lake, including the medians and walkways leading to the park.

If your property lies in Block Park or Block I, your attention is called to Paragraph (o) which grants special privileges to these lot owners. There are 101 lots in Block Park and the nine (9) lots in Block I which makes a total of 110 lots, the owners of which have the special privileges regarding the use of Park Shore Lake, the recreation park and the walkway between Park Shore Drive West and Park Shore Drive East.

Paragraph (i) states that lake front property owners have responsibility for their dam. Four of the dams (Entrance Lake, Clark Lake and the dams at North Lake Road) are Class A according to the Army Corp of Engineers. If a Class A dam suffered a cataclysmic failure there probably would be loss of life as well as property damage.

6

Deed Restrictions (cont.)

The other dams are Class B, i.e., there would be only extensive property damage in the event of a cataclysmic dam failure. Therefore, all owners of property bordering any lake should be aware of Paragraph (i) under the Deed Restrictions, and their potential responsibilities in the unlikely event of a cataclysmic dam failure. Likewise, for similar reasons, the owners of the 110 lots in Block Park and Block I, not bordering on Park Shore Lake should be aware of the stipulations in Paragraphs (i) and (o).

There are 100 lots that border on the proposed golf course. If your property borders on one of the two (2) areas held as a proposed nine hole golf course, your attention is called to Paragraph (n).

Note: As stated, one of these areas comprising 27.5 acres lying west of Block Park was developed because the option to construct 3 holes of golf on it has expired. The area which would accommodate the other 6 holes surrounds Blocks V and W in Old Spring Valley. It has been determined that the property which would have accommodated the 6 additional golf holes will not be developed as a golf course. Ownership of this property has reverted to Pine Springs, Inc. who has proposed a plan to utilize this property by subdividing part of it to be sold as 6 new building lots plus 9.34 acres on Brickyard Road to be developed outside of Spring Valley at a later date. The remainder to be divided into approximately 73 parcels and sold to present property owners whose property is contiguous to it. This plan has been approved and implemented.

The proposed golf course lots referred to in paragraph (n) above no longer exist. The acreage west of Block Park was developed by Pine Springs as Sweetgum Road. The acreage surrounding the proposed golf course in Blocks V and W was developed by Pine Springs into residential lots and individual parcels that were offered for sale to the adjoining property owners. Those adjoining parcels that have not been sold within ten (10) years (from 1993) will be conveyed by Pines Springs, Inc. to the Spring Valley Homeowners Association as common grounds.

Security and Safety

In order to maintain the residential quality and tranquility of the Spring Valley community, appropriate rules and regulations are needed to promote security and safety. Such provisions, as herein enumerated, are applicable to all residents, their guests where appropriate, visitors, and other such persons to include contractors, builders, and subcontractors. Our road system is private, and therefore access can be restricted to promote security and tranquility. At the same time, the state traffic control laws apply and can be enforced by any law officer as well as by our private security service.

1. The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

2. Traffic signs are posted for the safety of all residents, as well as to aid in the movement and control of vehicular traffic. The security force is authorized to issue citations for traffic violations. Fines paid or bonds forfeited go into the County Treasury.

3. The authorized Spring Valley bumper stickers (decals) must be displayed in plain view on the front and rear of all motorized vehicles, i.e., automobiles, recreational vehicles, motorcycles, motorbikes and mopeds.
(These stickers can be obtained by completing the application form available from a security officer or from the Administrative Manager.)

4. Motorbike operators are also required to comply with the traffic laws of South Carolina. All such two-wheel vehicles must meet all equipment requirements, have vehicle licenses, and their operators must be of age and licensed, as required by the South Carolina Motorcycle Laws. Pedal bicycles with helper motors of less than one horsepower may not be operated by persons under 12 years old, and of course, they are not eligible for a license to operate larger motor-driven vehicles.

5. The private road network of Spring Valley is not a race track for any type of motorized vehicle, nor should they be allowed to emit loud noises which are disturbing and distracting to the residential neighborhood. Again, this is the responsibility of parents to be sure that their children operate these vehicles in a mature and responsible manner.

Security and Safety (cont.)

6. Richland County has a "leash law" and the ordinance states: "that a dog be controlled by a leash or under the control of the owner and obedient to that person's command or within the property limits of its owner or keeper." Since this is a county-wide ordinance, the dog catcher is authorized to enter Spring Valley in response to a complaint. He is also authorized to enter the property of the dog's owner if the pursuit leads him there, provided he has seen the dog loose in violation of the ordinance. If you have a pet, and if you love your pet, please keep it at home and under control. If you have a complaint, the telephone number of the Richland County Ombudsman Office for Animal Control Center is 929-6000.

7. No soliciting is allowed in Spring Valley. If you are aware of unauthorized solicitations, please notify our Security Service at 261-9079.

8. Normal working hour guidelines for construction personnel who are working within Spring Valley are from 7 A.M. - 6 P.M., Monday through Friday. In the event extensions of this time are warranted, clearance and notification must be obtained from the Chairman of the Security Committee of the SVHA, or in his absence, from the private security agency responsible for security in Spring Valley. Such approvals must be obtained for **each** extension. No blanket extensions will be granted. However, in no event will work be permitted to be accomplished on Sunday or on the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving or Christmas except for emergency repairs due to natural disasters such as wind, fire or storms. No occupancy of unfinished houses is permitted.

Our security is furnished under a contract with a private security company. Their principal function is to patrol the area and man the gates at times established by the Spring Valley Homeowners Association. Security personnel are on duty at all times. The Richland County Sheriff has stated that Spring Valley has one of the lowest crime rates of any area in Richland County and he attributes this to the monitoring which is done by our private security service. Only through cooperative effort of the entire residential community can Spring Valley continue to be one of the major areas in Richland County having a minimum of serious incidents. Keeping a watchful eye out for your neighbors' properties and reporting suspicious activity can be of great help. You should also advise Security when you are going to be out of town for an extended period of time so that your property can be checked.

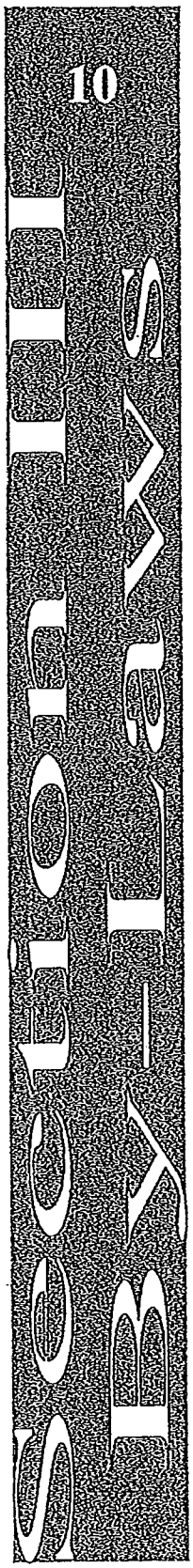
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Security and Safety (cont.)

Private security officers are authorized by the Act to Regulate the Private Detective and Private Security Business (R 630, S 311) as follows:

> "Section 13. Any person covered by the provisions of Section 9 or properly registered or licensed under this Act who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and powers which Sheriff's have to make the arrest of any persons violating or charged with violating any of the criminal statues of this State, but shall have such powers to arrest only on the aforementioned property."

In addition, the Richland County Sheriff's Department provides routine patrols and is charged with answering calls in our community. In case of emergency, call 911.



By-Laws

Article I: Name and Location

Section 1. The name of this Corporation is Spring Valley Homeowners Association. It was incorporated under the Laws of the State of South Carolina on May 6, 1976.

Section 2. The principal office of the Association shall be in Columbia, South Carolina, with such mailing address as determined by the Board of Directors.

ARTICLE II: Definitions

Section 1. "Association" shall mean and refer to Spring Valley Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Properties" shall mean and refer to the real property conveyed to the Association and held for the use and benefit of the owners of property in Spring Valley Subdivision.

Section 3. "Residential Lot" shall mean and refer to any unimproved parcel of land located within Spring Valley Subdivision as defined herein below which is intended for use as a site for a detached, single family dwelling.

Section 4. "Family Dwelling Unit" shall mean and refer to any Residential Lot on which there has been constructed a detached, single family dwelling.

Section 5. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of any Residential Lot or Family Dwelling Unit.

Section 6. "Spring Valley" and "Spring Valley Subdivision" shall mean the original subdivision as developed by Pine Springs, Inc. including that area known as Spring Valley East, all as shown on a plat entitled "Composite Map of 'Spring Valley' Richland County, near Columbia, South Carolina" dated October 8, 1975, revised April 21, 1977, recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X, pages 9086 A and B, plus that area known as Flora Tract I, containing 49.3 acres, and shown on a plat prepared for Edwin H. Cooper and C. W. Haynes & Co., Inc., by McMillan Engineering Co., dated December 17, 1975, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book W at page 125, and, if and when purchased by Pine Springs, Inc. that area known as Flora Tract II, containing 31.46 acres, consisting of Parcel "C" and Parcel "D" shown on a plat prepared for Pine Springs, Inc. and A. C. Flora by William Wingfield, R.L.S., dated December 14, 1970, and recorded in the Office of the Register of Mesne Conveyance for Richland County in Plat Book X at page 1366, plus any areas which may hereafter be accepted by the Association in accordance with these by-laws and not in violation of that certain Indenture, dated May 31, 1977, by and between Spring Valley Associates, Inc., Pine Springs, Inc., Spring Valley Homeowners Association and Spring Valley Roads & Parkways, Inc. recorded in the Office of the Register of Mesne Conveyance for Richland County in Deed Book D 426 at page 347.

By-Laws (cont.)

Section 7. "Board of Directors" shall mean Board of Directors of the Spring Valley Homeowners Association as regularly and duly elected from time to time according to the by-laws of the Association.

Section 8. "Members in Good Standing" shall mean the members of the Association as defined in Article IV whose voting rights have not been suspended as provided by Article X hereof.

ARTICLE III: Purposes and Powers

The corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members. The purposes for which it is formed are:

> To provide an agency through which the Owners of property within Spring Valley may exercise management and control of the roads, streets, parks, and common properties within Spring Valley in order to maintain aesthetic standards within the subdivision and to provide adequate security protection to the residents and users thereof and for these purposes:
>
> > (a) to own, acquire, operate and maintain residential park, common areas, streets, roads, footways, lakes, dams, spillways; (b) to provide private police protection; (c) to maintain unkempt lands and trees in the Common Properties; (d) to fix assessments to be levied against the Residential Lots and Family Dwelling Units; (e) to pay taxes, if any, on the Common Properties; (f) enforce any and all covenants, restrictions and agreements applicable to the property within Spring Valley; and (g) to do any and all other things that in the opinion of the Board of Directors will promote the common benefit and enjoyment of the residents and owners within Spring Valley.

ARTICLE IV: Members

Section 1. The Association shall have three (3) types of memberships:

(a) Regular Member - any owner of record of a Family Dwelling Unit in Spring Valley.
(b) Associate Member - the owner of a Residential Lot.
(c) Additional Member - Spring Valley Country Club.

Section 2. Members' Rights in Property. None of the members or officers of the Association shall have any vested interest in any money or other property belonging to the Association upon termination of his membership in the Association for any reason, nor shall he have any right to demand that any property, real or personal, belonging to the Association be turned over to him except as the law of South Carolina provides otherwise.

By-Laws (cont.)

ARTICLE V: Financial Participation of Members

Section 1. Method of Assessment.
(a) The initial assessment shall be $10.00 per month for each Family Dwelling Unit and $6.00 per month for each Residential Lot. The initial assessment for the Additional Member shall be $150.00 per month. The Board of Directors shall have the right to change the amount of the assessment from time to time, provided that any increase shall be proportionately uniform among all classes of members; and provided, further, that in the event the Board of Directors shall increase the "assessment set by the membership" by more than 20% of the said assessment rate, the membership shall have the right to void or reduce the amount of increase by action taken at a meeting of the membership called and held in accordance within 90 days after receipt of notice of such proposed increase. The term "assessment set by the membership" shall mean the latest assessment approved by membership vote, whether such vote establishes an assessment or results in a refusal to void an assessment set by the Board, and shall include the initial assessment set forth above.

(b) Assessments upon Residential Lots shall be made only with respect to those lots which have available all utility services planned to be installed by the developer and which front on a paved street or road.

(c) Owners of real estate are responsible for payment of assessment and compliance with established rules and regulations levied against the property even though the property has been rented to others.

Section 2. Manner of Payment

Each member's payment shall be due and payable quarterly. The Treasurer will notify members of the sum and due date. A service charge at the rate of 18% per annum, compounded quarterly, will be calculated on the balance of any member's account unpaid as of the beginning of the next succeeding quarter. Accounts that require legal remedy for collection will be assessed any and all expenses incurred by the Association including attorney fees, court costs, and filing fees.

Section 3. Use of Assessments

The monies collected by the Association shall be used for the maintenance of roads, lakes, dams, and common areas in Spring Valley to which recorded title is held by the Association, the providing of private police protection for the residents of Spring Valley, the operational expenses of the Association, the enforcement of the rights of the Association, and any other purposes which from time to time may be deemed necessary by a majority of the votes cast by the membership in accordance with the provisions for voting as specified in these By-Laws; provided, however, that those Owners who have obligations by virtue of recorded covenants to maintain the lakes, dams and spillway areas shall be solely responsible for such maintenance, the Association in such instances being merely an agency for the administration of such obligations.

By-Laws (cont.)

ARTICLE VI: Meetings of Members

Section 1. Annual Meeting.
The annual meeting shall be held on the second Tuesday of November at the hour of seven o'clock in the evening for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. The annual meeting may be moved to an alternate business day in that same week, provided at least thirty (30) days notice is given to all members.

Section 2. Special Meetings.
Special meetings of the members, for any purpose or purposes, unless otherwise provided by statute, may be called by the President or by a majority of the Board of Directors, and shall be called by the Secretary at the request of members in good standing representing not less than ten percent (10%) of the voting power of the Association.

Section 3. Place of Meeting.
The Board of Directors shall designate any place in the County of Richland as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

Section 4. Notice of Meeting.
Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 30 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, to each member entitled to vote at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid. Accompanying, or incorporated in, the notice shall be a description of the significant actions which shall have been taken by the Board of Directors and Committees of the Board since the last meeting as well as other information of interest or concern to the membership.

Section 5. Record Date for Notice and Vote.
Those names appearing on the books of the corporation as members as of a date chosen by the Board of Directors, which date shall not be less than 30 nor more than 50 days before the date of the meeting, shall be those who shall be entitled to receive notice of any annual or special meeting and who shall be entitled to vote at such meeting.

Section 6. Quorum.
Members of the Association in good standing having ten percent (10%) of the entire voting power of the Association, represented in person or by proxy, shall constitute a quorum at a meeting of the membership. If less than a quorum is present at a meet-

By-Laws (cont.)

ing, the holders of a majority of the voting power present may set a date for a substitute meeting not less than 30 nor more than 50 days later. At such subsequent substitute meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding withdrawal of enough members to leave less than a quorum.

Section 7. Voting of Membership.
Each Regular Member and each Associate Member in good standing shall be entitled to one vote for each Family Dwelling Unit and/or Residential Lot owned by such Member on each matter which is before the membership of the Association. The Additional Member shall be entitled to Fifty (50) votes on each such matter. At all meetings of members, a member may vote in person or by proxy executed in writing and filed with the Secretary of the Association before or at the time of the meeting. Where a Family Dwelling Unit or Residential Lot is owned by more than one person as tenants in common, joint tenants, life tenant and remainderman, or otherwise, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot. Voting by the Additional Member and other corporate members shall be by the officer, agent or proxy designated in the By-Laws or in a resolution of the Board of Directors of such member. In the absence of any such designation, the president, any vice president, secretary and treasurer of such member shall be presumed to possess, in that order, authority to vote for such member.

Section 8. Votes Required. A majority of votes cast at a meeting of members, duly held, at which a quorum, pursuant to Article VI, Section 6, is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting except as otherwise provided for by these By-Laws.

ARTICLE VII: Board of Directors: Number: Term of Office

Section 1. Number.
The Board of Directors shall consist of nine (9) elected members of the Association, who shall serve until their successors shall be elected by the members of the Association, and two (2) honorary directors. (Amendment to By-Laws adopted at Annual Membership Meeting on November 28, 1977.)

Section 2. Term of Office.
At the first annual meeting, Association members shall elect two (2) Directors for a one (1) year term, (2) Directors for a two (2) year term, and three (3) Directors for a three (3) year term. At each Annual Meeting thereafter members shall elect successors to the expired Board Member terms for terms of office of three (3) years each. Board Members may succeed themselves or be elected to a different position.

By-Laws (cont.)

Section 3. Directors and Officers.
Four of the members of the Board of Directors shall also be elected by the Board to fill the offices of President, Senior Vice-President, Secretary and Treasurer. The initial President and Secretary shall be those Directors who shall have been elected at the first annual meeting of members for one (1) year terms. The Senior Vice-President shall be one of the two Directors who shall have been elected at the first annual meeting of members for a two (2) year term. The Treasurer shall be one of the three Directors who shall have been elected at the first annual meeting of members for a three (3) year term. The officers shall serve at the pleasure of the Board of Directors.

Section 4. Removal.
Any Director may be removed from the Board, with or without cause, by a vote of the Members of the Association. In the event of death, resignation, or removal of a Director, the vacancy may be filled by the remaining Directors until the next Annual Meeting of the members of the Association or until any special meeting of the members called for the purpose of electing Directors.

Section 5. Compensation.
The Directors shall receive no compensation for attendance at regular or special meetings, provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefore.

Section 6. Honorary Directors of the Association.
Honorary Directors shall have voting privileges but shall not be permitted to hold any office in the Association. These Directors shall be the President of Pine Springs, Inc., and the Additional Member or their designated representatives.

Article VIII: Nomination of Directors

Section 1. Nomination.
Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nomination may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a Chairperson, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting of the Members, to serve from the close of each Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for the election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members only.

By-Laws (cont.)

Article IX: Meeting of Directors

Section 1. Regular Meetings.
Regular meeting of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings.
Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two of the Directors, after not less than two (2) days notice to each Director.

Section 3. Quorum.
A majority of the number of Directors then in office shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

Article X: Powers and Duties of the Board of Directors

Section 1. Powers
The Board of Directors shall have the power to:
(a) adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the Members and their guests thereon and to establish penalties for the infractions thereof:

(b) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended for a period not to exceed sixty (60) days from infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of the By-Laws or the Articles of Incorporation, including the enforcement and exercise of all conditions, covenants, restrictions and limitations contained in deeds given by Pine Springs, Inc. or Spring Valley Associates, Inc. to lots or residence in Spring Valley;

(d) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors or if unusual circumstances force resignation;

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and

(f) appoint such committees deemed appropriate in accordance with Article XII; and

By-Laws (cont.)

(g) adopt and publish rules and regulations governing the use and alteration of property located in Spring Valley that does not restrict deed restrictions, covenants, nor Richland County Ordinances. (Amendment to By-Laws adopted at Annual Membership Meeting on November 8, 2004.); and

(h) adopt and publish a schedule of fines as appropriate, for violations of covenents, deed restrictions, rules and regulations and/or By-Laws of the Spring Valley Homeowners Association (SVHA) by "owner(s)". (Amendment to By-Laws adopted at Annual Membership Meeting on November 8, 2004.).

Section 2. Duties

It shall be the duty of the Board of Directors to:

(a) establish, levy, assess and collect the assessments or charges pursuant to the provision of Article V of these By-Laws and covenants in the Deeds;
(b) cause to be kept, a complete record of all its acts and corporate affairs;
(c) furnish, upon demand by any Owner liable for an assessment, a certificate in writing signed by an Officer of the Association setting forth whether any assessment owed by such owner has been paid. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;
(d) supervise all Officers, agent and employees of this Association , and to see that their duties are properly performed;
(e) (1) send written notice of each assessment to every Owner subject thereto at least ten (10) days in advance of each assessment period;
(2) after other methods fail, to pursue all available legal remedies as necessary to collect all charges or assessments which are not paid within sixty (60) days after due date;
(f) procure and maintain adequate liability and hazard insurance on property owned by the Association;
(g) cause the Common Properties to be maintained; and
(h) see that all provisions of the By-Laws are complied with; and
(i) assess and collect fines for the continuous and repeated violation(s) of covenents, deed restrictions, rules and regulations, and/or By-Laws by "owner(s) until the violation(s) is/are abated. (Amendment to By-Laws adopted at Annual Membership Meeting on November 8, 2004.)

Article XI: Officers and Their Duties

Section 1. Enumeration of Offices.
The offices of the Association shall be a President, a Senior Vice President, a Secretary and a Treasurer, all of whom shall at all times be Members of the Board of Directors, and such other officers as the Board may from time to time designate.

Section 2. Election of Officers.
The election of Officers shall take place at the first meeting of the Board of Directors following the Annual Meeting of the Members.

By-Laws (cont.)

Section 3. Special Appointments.
The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 4. Resignation and Removal.
Any Officer may be removed from office with or without cause by the Board of Directors. Any Officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date accepted by two or more Board members.

Section 5. Vacancies.
A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 6. President.
The President shall be the principal executive Officer of the Association and shall, in general, supervise and control all of the business of the Association. He shall, when present, preside at all meetings of the Members. He may sign, with the Secretary or any other proper Officer of the Association, any deeds, mortgages, bonds, contracts, or other instruments which the Members or Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Members or Board of Directors or these By-Laws to some other Officer or agent of the Association; and in general shall perform all duties incident to the office of President and such other duties as may be assigned to him by the Board of Directors.

Section 7. Senior Vice President.
In the absence of the President or in the event of his death, inability or refusal to act, the Senior Vice President shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Senior Vice President shall perform such other duties as from time to time may be assigned to him by the President or the Board of Directors.

Section 8. Secretary.
The Secretary shall be responsible for written minutes of all meetings of the Board of Directors and the Association and maintain an official Minutes Record Book containing copies of the minutes; record, transcribe, and deliver to the Board of Directors the official minutes of every annual and special meeting not later than ten (10) days after the date of such meeting; act as custodian of all records, except those specifically assigned to others; publish newsletters after each Board meeting and prior to annual meetings; provide letters of welcome to newcomers and furnish all material relating to the Association and their responsibilities as Members; maintain current listings of all homeowners and lot owners; and perform all of the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or Board of Directors.

By-Laws (cont.)

Section 9. Treasurer.
The Treasurer shall have charge and custody of, and be responsible for, all funds of the Association; receive and give receipts for monies in the name of the Association in such banks, trust companies, or other depositories as may be selected by the Board of Directors; be responsible for presenting a financial report to the Membership at the annual meeting which shall include a financial accounting of the Association for the previous year, and a budget for the coming year; keep an accurate and detailed account, in the Treasurer's permanent book, of all monies received and paid; submit a statement at the regular meetings of the Board of Directors and the Association, including total balance on hand at the beginning of the period covered by the report, and the separate amounts credited to the general fund, receipts, disbursements, and the total balance on hand at the date of the report; provide notices of assessments to all Owners at least ten (10) days in advance of each assessment period; provide notice to delinquent Members and supply pertinent information if requested by a Member; notify the Board of Directors of Owners who have not paid their assessment within sixty (60) days after the due date; and do all other things which from time to time may be assigned to him by the Board of Directors.

Section 10. Compensation.
No compensation shall be paid to the Officers as such for their services, but by resolution of the Board of Directors and approved by the general membership.

Article XII : Committees

The Association shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XIII: Contracts, Loans, Checks and Deposits

Section 1. Contracts. The Board of Directors may authorize any Officer or agent or agents to enter into any contract or execute and deliver any instrument in the name of the Association, in an amount not to exceed an approved budgeted item plus any reserve fund which the Association may maintain for that specific item.

Section 2. Loans. No loan shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

By-Laws (cont.)

Section 3. Checks and Drafts. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such Officer or Officers, agent or agents, of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE XIV: General Provisions

Section 1. Waiver of Notice. Unless otherwise provided by law, whenever any notice is required to be given to any Member, Director, or Officer of the Association under the provisions of these By-Laws, a waiver thereon in writing, signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

Section 2. Amendments. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by a two-thirds majority of those Members present and voting at any annual or special meeting of the Association, provided the notice of such meeting, given in accordance with the requirements of Article VI, section 4, shall have given notice of the intention to alter, amend or repeal the By-Laws at such meeting, briefly setting forth the purpose of such proposed change.

Section 3. Fiscal year. The fiscal year of the Association shall be determined by the Board of Directors.

Section 4. Procedure. All meetings of the membership and of the Board of Directors shall be conducted in accordance with Roberts Rules of Order Revised according to the most recent edition.

Section 5. Property of Members and Association to be separate and distinct. The private property of the Members shall not be subject to the payment of Association debts, no matter how acquired, to any extent whatever, however each and every member shall be permanently liable for all dues and assessments not timely paid.

Section 6. Indemnity. The Association shall indemnify and hold harmless each person, his or her personal representative, heirs and assigns who shall or did serve as a Director or Officer of the Association from and against any and all claims or liabilities to which such persons become subject by reason of having heretofore or hereafter been a Director or Officer of the Association or by reason of any action alleged to have been taken or omitted by such persons as Director or Officer and shall reimburse each such party for all legal and other expenses reasonably incurred by him in such connection with any such claim or liability; provided however that no such person shall be indemnified against or be reimbursed for any expense in-

By-Laws (cont.)

curred in connection with any claim or liability arising out of said party's own negligence or willful misconduct.

Section 7. Dissolution of Corporation. The corporation may be dissolved upon the vote of a two-thirds majority of the entire membership of the Association, provided the notice of the meeting, given in accordance with the provisions of Article VI, Section 4, shall have stated that it would be for the purpose of considering dissolution of the corporation.

Section 8. Authority and Powers. All authority and powers not expressly granted to the Officers and Directors in these By-Laws are reserved to the membership.

Section 9. Annual Report. An annual report shall be prepared and presented to the membership at the Annual Meeting. This report shall include a financial accounting of the Association for the previous year and a budget for the coming year.

Rules and Regulations (Adopted at the Annual Membership Meeting on November 8, 2004 and Amended November 12, 2007.)

Architectural

1. **Structures**

a) All new homes shall be a minimum of 3,000 heated square feet adjoining a lake or the golf course and 2,800 heated square feet elsewhere. Before construction may begin, a completion of deposit of $1,500 must be made with SVHA and a letter from the architectural committee approving the home and landscape plans must be received.

b) An approval letter is required for any foot print modification to a home or any additional structures on the premises. At the Architectural Chairman or Board's discretion, the completion deposit may be required also. This includes fences, pools, and outbuildings of any description.

c) The homeowner is responsible for any and all damage caused by their contractors to SVHA property or SVHA resident's property.

d) All outbuildings shall be made of a material similar to with a style and likeness of the house. All outbuildings require a letter of approval from the architectural committee.

e) Garage entry should always provide for a side or rear entry from the street.
   i) A corner lot may have a side entry which causes the entry to be direct from the street.
   ii) A direct entry from the street other than side entry (excluding corner lots) must have board approval.

f) The minimum set back for a residence if fifty (50) feet from the curb to the most forward part of the house.
   i) Side line set back is fifteen (15) feet.
   ii) The board has the right to grant special exceptions to these set backs as it deems necessary.

g) Paint does not require the approval of the architectural committee or board. Offensive shades of paint (or brick) that distract from the neighborhood are not allowed. The board has the right to require the removal of such an offense.

i) Completion Schedule
   i) All construction should begin within six months of approval and be completed within 18 months of the approval date.

Rules and Regulations (cont.)

ii) The lot should be maintained in such a manner during construction that debris and trash will not accumulate and become unsightly to the neighborhood.

iii) The homeowner will also be expected to maintain the lot so that soil and/or sand will not wash into the streets or storm drainage system during construction.

iv) The homeowner will be responsible for controlling and properly disposing of any and all water on the lot that presents any potential hazard (problem) during and after construction is complete. This would include but not be limited to water problems that were caused by grading, construction, or springs and/or the natural flow of streams.

2. Fence Restrictions

a) A fence may be a maximum of four feet tall in the front yard and eight feet tall in the back yard.

b) A fence over four feet tall should not exceed the set back corners of the house unless it is used to hide an unattractive feature, such as an air conditioning unit.

c) A fence should be stepped up or down to follow the lay of the land.

d) A fence may be brought forward of the house if it has the appearance of being a main structure.

e) All fences must reach to the ground.

f) Approved fence material is wrought iron (or aluminum), stucco, brick, wood, metal chain link (back yard only) or invisible. Wood, brick, or stucco can be painted.

g) The finished or best side of the fence must face the neighbor's property.

h) All fences require the approval of the architectural committee or board. The board has the right to grant a special exemption as it deems necessary to the above rules.

i) A fence must be maintained in the manner originally approved by the Architectural Committee. Failure to maintain a fence in the original condition, as seen from both within the homeowners community as well as from the outer perime ter, will result in application of the Unsightly Conditions Fine Schedule.

3. Pool restrictions

a) Only in-ground swimming pools are allowed.

Rules and Regulations (cont.)

b) The pool must have a minimum set back of fifteen (15) feet from the back and side property lines.

c) The pool may be covered if the structure is joined to the house and has a similar design to the house.

d) All pools require the approval of the architectural committee or board. The board has the right to grant a special exemption as it deems necessary to the above rules.

4. **Antennas**

a) Only small (12" to 36") satellite dishes are allowed.

b) The dish must be located in the rear of the house and not be visible to the neighbors.

c) Architectural committee approval is not required, but the board retains the right to have unsightly dishes removed.

Use of Premises

1. **No vehicle deemed to be unsightly by the Association shall be permitted to remain on any portion of the property so as to be visible from adjoining property or public or private thoroughfares.**

a) Camper trailers, travel trailers, recreational vehicles, motor homes, mobile homes, boats, trailers, school buses, commercial vehicle(s), unlicensed or stored vehicle(s), and/or commercial equipment of any kind shall not be parked, stored or otherwise housed on any property in Spring Valley.

b) Unlicensed or stored vehicles may be kept in an enclosed garage.

c) Utility trailers that support the premises may be stored in a garage or out of sight of all neighbors.

d) Boats may be stored in a garage. If the residence is on a lake, the boat, as permitted under the deed restrictions, may be stored on the residence premises concealed from view.

e) All vehicles shall park in approved areas. These areas are garages, carports and paved driveways. No vehicles of any kind, whether owned or operated by owner or tenant, shall be routinely parked at any time on any roadway, median, lawn, or common area of Spring Valley.

Rules and Regulations (cont.)

Unsightly Conditions (Adopted at the Annual Membership Meeting on November 15, 2005 and Amended November 9, 2010.)

a) Each owner or tenant should prevent the accumulation of litter, trash, or rubbish on his or her property and keep the property clean and well maintained. This includes keeping grass, plants, and other vegetation cut, free of fallen leaves, and well trimmed, and picking up articles such as yard games and toys. A well maintained yard shall be expected to be regularly maintained. Occasional cutting, once weeds have created an eyesore, is not acceptable. Grass that has been allowed to deteriorate to significant areas of sand and weeds, with only occasional patches of grass is not acceptable. All landscaping and grounds shall be maintained in a condition to preserve the values of all properties within the community.

b) It also includes the placement of trash, debris, furniture, and large appliances curbside at the appropriate times.

c) During any construction, dirt, building debris and other construction-related refuse shall be cleaned from street and storm drains so as not to deposit silt and/or sediment and/or any debris into ditches, streams, ponds or any other area off the construction site. The Association may require additional clean-up if deemed necessary to fulfill the obligation stated herein.

d) If in the opinion of the Association, the owner or tenant is failing in this duty and responsibility, then the Association may give the owner written notice of such and the owner must undertake the care and maintenance required to restore the property to a safe, clean and attractive condition within fifteen (15) calendar days of such notice. If the owner fails to fulfill this duty and obligation after such notice, the Association shall have the right and power to implement a fine of one hundred dollars ($100) per week, until abatement, or the fines reach $1,500 per violation, per year.

Fine Structure for Abatement of Violations of Deed Restrictions, Spring Valley Homeowner Association (SVHA) Rules and Regulations and Ordinances of Richland County. (Adopted at the Annual Membership Meeting on November 8, 2004 and Amended November 9, 2010)

Fines

a) The owner shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The owner is expected to work in good faith with the General Manager to correct the violation within fifteen (15) days.

b) The board has the right to fine the owner $100.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year after the fifteen (15) day written notice to correct the violation. If a property has three (3) or more occurrences of the same violation during the same calendar year, a $100.00 fine will be levied immediately upon the third occurrence and any recurrence during that year. Additionally, if the violation is not corrected within one week, then the $100.00 weekly fine schedule will be implemented until abatement or the fines reach $1,500 per year, per violation.

c) With board approval, the owner may be sued to correct the violation.

d) If the owner does not correct the violation, the board can elect to assess the owner based on the estimated cost to correct the violation.

Common Questions and Answers

Here are the answers to many of the most commonly asked questions about Spring Valley. The questions have been categorized as follows:

General Questions Page 26
Architectural Review Page 27
Spring Valley Country Club Page 27
Garbage Service Page 28
Business Operations from Residence Page 29
Lakes Page 30
Restrictions Page 30
Security Page 31
Spring Valley Homeowners Association Page 32

General Questions and Answers

We have a question that is not covered in the Green Book. What should we do?

The Spring Valley Homeowners Association has several resources available to assist you. First, the Association has a Manager. You can reach the Manager at 788-2410. Common questions and problems often involve many of the topics covered in this section of the Green Book. Even if your problem does not directly involve the Association, the Manager may be able to assist you.

Second, the SVHA Administrative Manager handles all inquiries concerning Association billings and the sale of property. You can reach the Administrative Manager at 788-7711.

The third resource available to you is your Association Board. Each Board Member has been assigned an area of responsibility. A list of names, phone numbers, and areas of responsibility is contained in each SVHA quarterly newsletter. Please feel free to contact the Association Manager, the Administrative Manager, or a Member of the Board if you have any questions or concerns.

Architectural Review

We are planning on building a new home in Spring Valley. What do we need to do?

First, you need to review the deed restrictions. Please pay particular attention to minimum square footage and set back requirements. Secondly, notify your neighbors who are within view of your planned construction (new home, addition, fence, etc.) of your plans. The purpose is to seek comments, pro or con, about the proposed construction. This will preclude surprise and controversy when the construction begins. Finally, your plans must be submitted to the Chairman of the Architectural Committee for approval. This committee will verify that your plans comply with the requirements. In addition, the committee checks to make sure that the style of the house is appropriate and does not match another home on your block.

We are planning an addition to our home. Do we need approval from the Architectural Committee?

Yes. All additions and alterations to the exterior of your home require approval. This would also include fences, gazebos, unattached garages, satellite dishes and other structures. Please follow the guidelines stated in the previous question. Storage sheds cannot be approved.

Is there a time requirement associated with approval?

All approvals contemplate a start date within six months of approval and a completion date within eighteen months of approval. Extensions can be applied for with the Architectural Committee.

Spring Valley Country Club

Does residency in Spring Valley include a membership in the Country Club?

No. The Spring Valley Country Club is a private organization that includes residents and nonresidents of the Spring Valley subdivision. For information about club membership, please contact the club office at 788-3080.

May non-members use the golf course after hours?

Access to the golf course is limited to club members with golf privileges.

Is the golf course available for evening walks?

The club asks that no one walk on the course unless he or she is involved in a round of golf. It is a nuisance to golfers to have walkers or pets on the course. Additionally, there is a danger of being hit by a golf ball.

Garbage Service

Is it necessary to roll the "Herbie Curbie" trash can out to the street?

No. In fact, Spring Valley restrictions prohibit you from doing so. Your Association has made arrangements for back door pick-up. Your county taxes include a small fee for this service.

Why does the garbage service pick up only a portion of yard trash?

Richland County has an ordinance that requires the garbage service to pick up all of the yard trash that has been boxed or bagged. In addition, the garbage service is to take the equivalent of two "Herbie Curbies" of loose yard trash. If you have a large pile of loose trash, it may take several visits before it will be completely removed. You can prevent this situation by boxing or bagging a portion of the yard trash. In addition, you should avoid combining yard trash with your neighbor's. The garbage service may mistake it as the yard trash of one household instead of two. Do not put yard waste on vacant lots as it will not be removed.

May I put yard debris in the "Herbie Curbie?"

County regulations prohibit mixing household garbage, recyclables and yard trash. For that reason, please do not mix these types of trash. Please put yard debris by the street. Do not put the yard trash in the street or in a place where water may push it into the drainage system. Tree limbs must be less than four feet long and less than four inches in diameter for removal. Any limbs larger than this must be removed by the homeowner.

What role did the Homeowners Association play in selecting our current garbage service?

None. The garbage service is selected by Richland County, not by your Association. Your Association has no formal role with the garage service. However, we do maintain an open flow of communications with them. Whenever there is a problem, the garbage service tries to work with us. Please note that the schedule is set by Richland County .

I have an old can of paint. May I put this in the garbage?

No. By law, this is a hazardous waste material. Use it, give it away or donate it to charity. If the paint can is open and completely dry the garbage service will pick it up for disposal on the same day as yard waste is removed. **The can must be completely dry. Place the can at the curb with the lid removed.**

Garbage Service (cont.)

How do I dispose of large items such as furniture and washing machines?

The washing machine and other large items such as furniture and appliances, will be picked up during the week of the second Monday of the month by the garbage collector. Place these items near the curb (*but not on the street*) in front of ***your home*** on the Monday of the second week. Do not place any debris or garbage on vacant lots. The garbage service will not pick up any refuse from unimproved lots. Doors must be removed from refrigerators and freezers.

How do I dispose of debris from construction or remodeling?

Lumber, cement, wood and other construction debris will not be picked up curbside. Have your contractor remove the debris or take it to the County Landfill. The nearest County Landfill is located on Caughman Road off Highway 215 North.

How do I dispose of trees?

Trees will not be picked up curbside. They must be taken to the County Landfill. Branches less than four feet in length and four inches in diameter will be removed by the garbage service as yard waste. However, you must make sure that they are no larger than the dimensions stated above.

Business Operations from Residence

Is it permissible to operate a business out of our home in Spring Valley?

The deed restrictions in Spring Valley limit use to private residential purposes of a singe family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities and other activities that involve the public.

Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles or visitation by members of the public.

Lakes

Who is responsible for the lakes?

Responsibility for the lakes resides with the residents whose property borders on a given lake. Most of the lakes have their own Association that handles issues related to its particular lake. In addition, a member of the Association Board serves as the liaison to each Lake Association.

As a resident of Spring Valley, do I have access to the lakes?

Lake access is limited to those residents whose property borders on a given lake.

In order to perform necessary work in my yard, it will be necessary to lower the lake behind my house. With whom do I need to talk with about this matter?

Each lake should have its own "Lake Association". Your request to lower the lake should be submitted to the President of your lake association. In addition, please coordinate any such activity with the Association Board Member who oversees the lakes.

Restrictions

Are "For Sale" signs permitted?

Spring Valley deed restrictions prohibit all forms of signs within the subdivision. This includes all types of "For Sale" signs as well as lost pets signs, garage sale signs, remodeling signs, security service, and political signs. Balloons on mailboxes by owners or realtors are considered signs.

Is it permissible to operate a business out of our home in Spring Valley?

The Richland County Zoning Ordinance and deed restrictions in Spring Valley limit use to private residential purposes of a single family. Business operations are not permitted. Examples of prohibited activities would include retail operations, studios, day care facilities, and other activities that involve the public. Residents may maintain an office in their homes provided that it does not involve commercial deliveries, storage of commercial vehicles, or visitation by members of the public.

What about RVs, campers, boats, buses, commercial equipment, trailers and commercial vehicles?

These items are not permitted to be stored or parked in Spring Valley.

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Security

What is the speed limit in Spring Valley?

The speed limit for our urban area, and as set forth by South Carolina law, is 30 mph unless otherwise posted.

Are the citations given by Security "real tickets"?

The citations, including speeding tickets, are issued by authorized law enforcement officers. The Association does not receive a portion of the fine.

How do I get in contact with Security?

The mobile phone number for the officer on duty is 261-9079. If the officer is on another call or not available, a voice mail message service is in place to take your message. The officer will be back with you shortly.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are staffed by Security?

Spring Valley maintains twenty-four hour security every day of the year. It should be noted that events do take the officer temporarily away from the phone. He or she may be offering assistance to a resident or investigating a situation. This may prevent an officer from being immediately available.

IF THERE IS AN EMERGENCY AND THE OFFICER IS NOT AVAILABLE, CALL 911 IMMEDIATELY!

What hours are the gates open?

Spring Valley has four gated entrances, the main entrance on Two Notch Road is manned by security each night. The entrances from Flora Road and two from North Springs Road are locked to all traffic at night. Those wishing to gain access to Spring Valley should use the main entrance on Two Notch Road during those hours. If you are expecting guests after hours, please direct them to enter through the main entrance on Two Notch Road. You should contact security at 261-9079 prior to the arrival of your guest to inform security that your guest has your permission to enter Spring Valley.

There is a street light on my street which is not working. What should I do?

The street lights are maintained by SCE&G. One of the tasks assigned to Security is to note lights that are not working and report them to SCE&G. If you see a light that is not working, you may report it directly to SCE&G at 748-3027. If you prefer, you may call the Spring Valley Manager at 788-2410.

Your Homeowners Association

Why do we have an Association?

Spring Valley was developed as a private community. As homeowners, we own the roads, drainage system, and common areas. The Association through the Board oversees the day-to-day management of these areas. In addition, the Association is here to assist the homeowners in maintaining the value, beauty, and integrity of Spring Valley. Providing security is an important aspect of this responsibility. The Board oversees activities related to these responsibilities.

How do I join the Association?

By owning property in Spring Valley, you are automatically a member of the Association and are subject to its restrictions, rules and regulations

When does the Association Board meet?

The Board meets on the fourth Thursday of the month at 6:30 pm. (Meeting time subject to change.) The meetings are held at the Spring Valley Country Club. The Board does not meet in November due to the Annual Meeting. The December meeting is usually rescheduled due to the holidays.

How do I bring an issue to the Board?

You should contact the Administrative Manager and request that your issue be put on the agenda. If you prefer to bring your concern before the formal Board meeting, please contact the Administrative Manager. To be on the agenda, it is preferred that you notify the Administrative Manger before noon of the Friday before the meeting.

How can I become more active in the Association?

The Association is always looking for residents interested in participating in the activities of Spring Valley. Please express your interest to any Board Member.

EXHIBIT 3

to Affidavit of Beth Swindler

SPRING VALLEY HOMEOWNERS ASSOCIATION
ANNUAL MEETING
MONDAY, NOVEMBER 12, 2007

President Ron Ellis called the annual meeting of the Spring Valley Homeowners Association to order at 8:25pm at the Spring Valley Country Club. The President thanked the residents for attending.

President Ellis introduced guests Val Hutchinson, Richland County, Mike Montgomery, Leon Howard, Bill Cotty, Joel Lourie. Kim Berry, Sizemore and Gregg Hyatt, Lt. Michael Prichard.

Board members present in addition to the President were Lu Armstrong, Sherwood Stark, Rodney Spivey, Robbie Robertson, Paul Johnson, Linda Stern, Ed Eargle and Ray Robinson. Others present included Carl Voges, Manager, Beth Swindler, Administrator, and Jack Sunderman, former board president.

President Ellis asked for any additions to the agenda. There were none.

The minutes of the 2006 Annual Meeting were given to attendees and a call for corrections or additions was made. Motion to made by Robbie Robertson to approve minutes. Seconded. Minutes were approved and submitted.

COMMITTEE REPORTS
Copies of the reports are filed with these minutes notebook.

Architectural Committee: Rodney Spivey
Gate Committee: Robbie Robertson
Security Committee: Paul Johnson
Thanked sizemore and Richland County for their assistance.

Lakes Committee: Ray Robinson
Ray stated it was a difficult year for the lakes with the drought and surrounding neighborhoods are having the same issues. Ray thanked the lake committees for getting together

Keep Springvalley Beautiful: Linda Stern
Question from floor regarding well suggested that Linda try a filtration system

Roads and Grounds Committee: Ed Eargle
Ed says Grassmasters continuing to serve. Updated his 3 goals to upcoming year 2008 – 1) establish an encroachment permit process. 2) Establish realistic retainment fees on new construction. 3) Need to look at drainage system and pipe system prior to laying new pavement.

Howard Davis, 200 Brooksprings stated he was very concerned about removal of 4 way stop
Rick Barber –Old Springs Rd. Asked about Street signs – are we going to be replacing them all

Skip Coogler – 2208 Bee Ridge Rd. Asked what is the road maintenance budget and what we are spending to date? Ed answered $143,000

Steve Hurley - 108 North Ridge Asked about expenses – are these 1 time or are these going to continue?

John Banister – stated he was apposed to 1 time assessments

Treasures Report: Sherwood Stark
Reported that we are making efforts to collect delinquent dues payments, but – we don't always get these funds.

Stewart Alshire: Asked about reserve funds.

2008 Budget Presentation: Rodney and Ray
Copy of presentation attached

Questions after presentation

Web Ridgeway - 125 Ridge Springs . Spoke in favor of budget. Wants to see Spring Valley be a better place to live

Steve Beck - 312 Springvalley Rd. – stated aggravated about why security is not patrolling neighborhood – why are they parked on side of the road creating speed traps?

Sue Susman – 2 Tift Green Circle
100% in favor of a fence – but does not like a fence that does not serve as visual barrier. Prefers an 8 foot tall fence that no one can see through.

John Banister – Asked what the board has done to get developers to pitch in on cost.

Wally George 2409 Bermuda Hills Rd - Would like to see a different type of fencing which is more appropriate for the area.

Fred Beacham – Valley Springs Rd. Asked who is liable if someone is injured on fence?
He is also very upset about speeding and lack of patrolling in neighborhood.

Motion:
Marc Fogerty – Northlake Rd made motion to approve budget as is.

Motion:
Rick Barber -Flora Springs Rd. made motion to institute separate budget

Motion:
Michael Rodgers – Valley Springs Rd. Made a motion to freeze budget – motion was seconded. Discussion ensued.

Motion:
Mike Sunderland 69 Old Springs Made a second motion to only increase budget by 30% - discussion ensued

Walt Canfield – Northlake Rd asked for clarification on 30% budget. Discussion ensued and a reduction across the board of 30% was agreed upon.

Election of new Board members
Nominating committee report – Ron Ellis, President.

Mac McElroy stated for the record that he felt the nominating committee did not participate in the process for the election on new board members and he did not feel that the slate was agreed upon in the appropriate manner.

President Ellis continued and asked for nominations from the floor. The following nominations were given:

Nominations from the floor came for the following people:

Mac McElroy nominated Sandra Mathews, Skip Cooler – Bee Ridge Rd nominated Russ Templeton, Walter Blackwell nominated Rodney Spviey, Ed Steck – 2128 Riding Ridge Road nominated Linda Stern and Ray Robinson. Walter Blackwell nominated Scrappy Stark

Motion made to table nominations and it was determined a separate voting ballot would be sent to all residents.

Danny Sanders - 308 Valley Springs Rd. asked why don't we use email for means of voting?

Updated bylaws:
1st by law passes.

2nd by-law regarding initiation fee - failed

3rd reduce fine - passed

4th regarding Landscape plans
Kimblery Watkins - 10 Barklay Court, Does not want to be told what she can plan inform of her home
Rodney addressed that this was strictly for new construction - passed

5th Use of premise - passed

6th Unsightly conditions – passed

Meeting was closed with announcement of that Ed Eargle would chair the 2008 nominating committee.

Motion to adjurned

11:46pm

Spring Valley Homeowners Association By-Laws Changes
Adopted at the Annual Membership Meeting November 12, 2007

Note: All Changes or additions listed in bold-face type.

1. Collection and Attorney Fees for Delinquent Accounts

ARTICLE V: Financial Participation of Members, Section 2. Manner of Payment: Each member's payment shall be due and payable quarterly. The Treasurer will notify members of the sum and due date. A service charge at the rate of 18% per annum, compounded quarterly, will be calculated on the balance of any member's account unpaid as of the beginning of the next succeeding quarter. **Accounts that require legal remedy for collection will be assessed any and all expenses incurred by the Association including attorney fees, court costs, and filing fees.**

2. Reduce Fine Structure Time Frame

Fine Structure for Abatement of Violations of Deed Restrictions, Spring Valley Homeowner Association (SVHA) Rules and Regulations and Ordinances of Richland County. (Previously Adopted at the Annual Membership Meeting on November 8, 2004.)

Fines:

a)The "owner(s)" shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The "owner(s)" is/are expected to work in good faith with the General Manager to correct the violation within **fifteen (15)** days.

b)The board has the right to fine those "owner(s)" who have a violation $50.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year beginning after the **fifteen (15)** day written notice to correct the violation.

c)With board approval, the "owner(s)" may be sued to correct the violation.

d)If the "owner(s)" does/do not correct the violation, the board may elect to assess the "owners(s)" based on the estimated cost to correct the violation.

3. Landscape Plans with House

Architectural; 1. Structures

All new homes shall be a minimum of 3,000 heated square feet adjoining a lake or the golf course and 2,800 heated square feet elsewhere. Before construction may begin, a completion deposit of $1,500 must be made with SVHA and a letter from the architectural committee approving the home and landscape plans must be received.

4. Use of Premises

Rules and Regulations: Use of Premises

No vehicle deemed to be unsightly by the Association shall be permitted to remain on any portion of the Property so as to be visible from adjoining property or public or private thoroughfares.

a) Camper trailers, travel trailers, recreational vehicles, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles(s), unlicensed or stored vehicle(s) and/or commercial equipment of any kind shall not be parked, stored or otherwise housed on any property in Spring Valley.
b) Unlicensed or stored vehicles may be kept in an enclosed garage
c) Utility trailers that support the premises may be stored in a garage or out of sight of all neighbors.
d) Boats may be stored in a garage. If the residence is on a lake, the boat, as permitted under the deed restrictions, may be stored on the residence premises concealed from view.
e) All vehicles shall park in approved areas. These areas are garages, carports and paved driveways. No vehicles of any kind, whether owned or operated by Owner or tenant shall be routinely parked at anytime on any roadway, median, lawn, or common area of Spring Valley.

5. Unsightly Conditions

Rules and Regulations: Unsightly Conditions

Maintenance of Property

The owner or tenant (or both of them) of each lot shall have the duty of and responsibility for keeping lot, the adjacent street right-of way, and the improvements thereon, in a well maintained, safe, clean and attractive condition at all times.

a) Each owner or tenant should prevent the accumulation of litter, trash, or rubbish on his or her property and keep the property clean and well maintained. This includes keeping grass, plants and other vegetation cut, free of leaves, and well trimmed, and picking up articles such as yard games and toys.
b) It also includes the placement of trash, debris, furniture and large appliances curbside at the appropriate times.
c) During any construction, dirt, building debris and other construction-related refuse shall be cleaned from street and storm drains so as not to deposit silt and/or sediment and/or any debris into ditches, streams, ponds or any other area off the construction site. The Spring Valley Homeowners Association may require additional clean-up if deemed necessary to fulfill the obligation stated herein.
d) If in the opinion of the Association, the owner or tenant is failing in this duty and responsibility, then the Association may give the owner or tenant (or both) notice of such and the owner or tenant must, within (15) calendar days of this notice, undertake the care and maintenance required to restore the property to a safe, clean and attractive condition. If the owner or tenant fails to fulfill this duty and obligation after such notice, the Association shall have the right and power to implement a fine of ($50) per week, until abatement, or the fines reaches $1,500 per violation, per year.

SPRING VALLEY HOMEOWNERS ASSOCIATION

Annual membership meeting

November 9, 2010

President Rodney Spivey called the meeting of the Spring Valley Homeowners Association to order at 7:07 PM. Board Members present were Rodney Spivey, Ray Robinson, George Johnson, Paul Spencer, Steve Holtschlag, Gary Walsh, Renee Gardner and Sandra Matthews. Also present were the General Manager, Carl Voges; Administrator, Beth Swinder

I. Call to Order

II. Review of Agenda - Approval requested

A. Motion by Bill Cantwell 416 Valley Springs; second Bill Tefs

B. No changes were requested and the Agenda was approved as published.

III. Introduction of Visitors - President Spivey introduced:

1. Major Danny Chavis, Sizemore Security

2. Bill Simpson, parliamentarian for the evening

IV. Minutes of the 2009 annual meeting - Approval requested

A. Motion made by Bill Simpson

B. Second by Bill Tefs

C. Minutes accepted without objection

V. Committee Reports

A. Grounds and Keep Spring Valley Beautiful

1. Steve Holtschlag provided a written report. He stated that he appreciated the calls that he received.

B. Lakes

1. Ray Robinson provided a written report. Greatest long term danger to the lakes is silt. Lakes are 50 years old, after 80-90 years, they fill in. They are a fundamental part of our storm water system; storm water then goes into Gills Creek or Crane creek. If the lakes fill in, they are less of a reservoir for storm

water. Expensive to remove silt from lake. Ray Robinson asked homeowners to alert the board if they see silt being deposited into the lakes.

2. Leaves and grass clippings in the gutters – when there is a rain it goes into the drains and into the lakes. Ray Robinson asked homeowners to keep grass on their property so that it doesn't get into the drains and lakes.

C. Roads and Storm Drains

1. Renee Gardner reported that SVHOA had resurfaced 1.7 miles this year. SVHOA obtained good prices from REA construction. Planning additional 1000 feet onto Riding Ridge Road.

2. Drainage was inventoried for reserve study; complaints about drainage boxes overflowing led to repairs and cleaning. Please call if you see problems with drainage.

3. In August, residents complained about Formby and Park Shore East – caused by residents putting clippings on drainage boxes.

4. Last month traffic study done at South Springs – wait time to turn left. Average wait time was 16 seconds. Most was 2 minutes. She is presenting data to DOT; requesting "no turn on red" on Brickyard/North Springs.

5. Fred Beacham, 301 Valley Springs – if you look left behind Bill Cotty's house, can't see cars coming; recommend blinking light on North Springs to slow cars down when headed towards Brickyard.

6. Renee recommended following rules of road when turning left. Barbra Jones, 5 Maple Springs Court – complained about loss of 4 way stop at Brooksprings and Olde Springs.

D. Security and Gates

1. Paul Spencer provided a written report.

a) Speeding in Spring Valley – 500 traffic stops this year. Leniency was given.

b) We did have some property crimes – usually the car or house was unlocked. Electronics stolen from unlocked houses. Money and computers stolen from unlocked cars.

E. Architectural

1. Russell Templeton reported that there were no approvals of new homes;
2. There were approved swimming pools, fencing and additions.
3. In the future, additions to houses may require a builder's deposit of $2,000.00.

F. Spring Valley Country Club

1. Gary Walsh reported that membership has continued to grow and the Club is in a positive cash position.

G. Treasurer

1. Sandra Matthews reported no increase in assessments; flat budget; reserve study being conducted to determine whether we had the right balances to operate in the future. Legislature may pass law requiring HOAs to conduct reserve studies; working through the numbers provided by consultant. Goal is to pre-fund our reserves. Expect to have a report for the homeowners in a couple of months. No unusual expenditures expected next year. Jay Jashinsky, 123 Valley Springs Road estimated $600,000 in the bank.

VI. Budget Vote

A. Bill Simpson made motion to approve
B. Bill Tefs seconded
C. Motion approved without objection.

VII. Election of New Board Members

A. Nominating Committee Report

1. Renee Gardner followed guidelines to find new people to volunteer for the board. Good candidates found: Hunter Limbaugh, Marc Fogarty, John Uhl nominated for 3 year terms. Steve Holtschlag being nominated or a one year term to fill unexpired term.

B. Nominations from the floor

1. Rodney Spivey asked for nominations from the floor.

2. Mac McElroy moved that all four directors be recommended by acclimation; Motion seconded by Bill Tefs. The motion was approved.

VIII. New Business

A. 2011 Nominating Committee

1. Rodney Spivey – George Johnson will head the committee

B. Proposed by-law changes

1. Rodney Spivey reported there are 1100 homes in the neighborhood. The reason the change is being requested because of repeat offenders who correct a problem and then do it again. Current bylaw doesn't provide for any type of punishment for repeat offenders. Fine schedule moved up $50 to give extra incentive to follow the rules.

2. Bob Jones, 5 Maple Springs Court – easy to make a law or rule but hard to enforce. Rodney responded that we plan as a board greater importance placed on enforcing the rules.

3. Mac McIlroy approves of changes; wants to make sure that the fines are being enforced.

4. Bob Werner, 202 Valley Springs Road. Concern is the punitive nature of fines, doesn't address the problems. Recommends remediation program, where the HOA corrects the problem if the landowner doesn't. Also concerned that the bylaws are "loose" - rules are enforced unevenly. No action on complaints

5. Fred Beacham, Valley Springs Road – disagreed with recommendation about going onto someone else's property to fix things. Who will enforce? Rodney – general manager will enforce. Can we have landscaping company clean yards where homeowners aren't able? Rodney – general manager can recommend landscaper

6. Motion to call question, by John Bannister – unanimous

7. Motion to approve new John Bannister; second John Uhl

8. Motion carries with three opposed

9. Proxies counted by Russ Templeton and Harry Goldberg

a) 291 for budget

b) 291 for by law

(1) fee increase

(2) third recurrence

C. Spring valley web site release

1. Beth Swindler demonstrated the new Spring Valley web site.

D. John Uhl commended the board and two employees for their work.

IX. Adjourn

A. Motion for adjournment made by Bill Simpson. The motion carried. The meeting adjourned at 8:15 pm.

EXHIBIT 4

to Affidavit of Beth Swindler

Notice Of Annual Meeting

The annual meeting of the Spring Valley Homeowners Association will be held at Spring Valley Country Club, Columbia, SC on Monday, November 12, 2007 at 8:00 p.m. for the following purposes:

To elect directors for the ensuing year,
To approve the budget of the Association for 2008,
To vote on changes to the By-Laws,
To transact such other business as may properly come before the meeting or any adjournment thereof.

For the Board of Directors,

Lu Armstrong
Secretary

Columbia, SC
October 2, 2007

THE BOARD ENCOURAGES EVERY MEMBER TO ATTEND. IF YOU ARE NOT SURE YOU WILL BE ATTENDING, THE BOARD REQUESTS YOU EXERCISE YOUR VOTE BY COMPLETING AND RETURNING THE ENCLOSED PROXY WITH YOUR ASSESSMENT PAYMENT. IF YOU ATTEND THE MEETING, YOU MAY RECOVER YOUR PROXY AND VOTE IN PERSON. MEMBERSHIP IN GOOD STANDING IS REQUIRED TO PARTICIPATE AND VOTE.

Proxy Statement

This proxy statement is furnished in connection with the solicitation by the Board of Directors of Spring Valley Homeowners Association of proxies in the accompanying form to be used at the Annual Meeting of the Association to be held at Spring Valley Country Club, Columbia, South Carolina, on November 12, 2007 at 8:00 p.m. and at any subsequent time which may be necessary by its adjournment. The shares represented by any proxy given as a result of this request will be voted as specified. Any proxy can be revoked at any time before it is exercised should the person who executed it so desire. Any member who executed a proxy and attends the meeting may elect to vote in person rather than by proxy. A member may revoke his proxy at any time before it is exercised by filing written notice or later valid proxy with the Secretary of the Association.

Voting

As of October 1, 2007, there were 1077 family dwelling units and 57 residential lots and Spring Valley Country Club in Spring Valley. The owner of a family dwelling unit is classified as a Regular Member of the Association. The owner of a residential lot is classified as an Associate Member of the Association. The Spring Valley Country Club is defined as the Additional Member of the Association.

Board of Directors

Three (3) Directors will be elected to a regular three (3) year term to replace the expired terms of Paul Johnson, Ray Robinson, and Sherwood "Scrappy" Stark. The Nominating Committee consisting of Linda Stern (Ch.), W. L. "Mac" McIlroy, and John Bannister submits the following slate to fill the vacancies which will occur at the end of the 2007 terms of the SVHA Board:

To fill three (3) year terms:

Paul Johnson, 104 Park Shore Drive West, is a 24-year resident. He retired as Director of Human Resources at the SC Department of Public Safety.

Ray Robinson, 509 East Springs Road, is a 20-year resident. He retired as President and CEO of Pirelli Communications Cables and Systems North America.

Sherwood "Scrappy" Stark, 3 Glenlake Road, is also a 20-year resident. He retired from the USC-Columbia Admissions Office.

To fill one (2) year terms:

Rodney Spivey, 2124 Bermuda Hills Road, is a 2½-year resident. He is a Senior Therapeutic Specialty Representative with Pfizer, Inc. He also serves on the "Trees for Two Notch" Committee for NE Richland Beautification Council.

Board Member	Term Expires
Lu Armstrong	2009
Rodney Spivey	2009
Linda Stern	2009
Ron Ellis	2008
H. M. "Robbie" Robertson	2008
Ed Eargle	2008
Paul B. Johnson	2007
Ray Robinson	2007
S. L. "Scrappy" Stark	2007

SPRING VALLEY HOMEOWNERS ASSOCIATION
Fiscal Year 2008 Budget
10/01/07 – 09/30/08

The fiscal year 2008 budget is based on the present assessment roll of 1077 residences, 57 lots, and the Spring Valley Country Club. Your Board has approved this budget to provide services necessary to properly maintain and improve our community. You are asked to ratify their vote. The proposed operations budget for fiscal year 2008 and the approved budget for fiscal year 2007 are listed for your review.

REVENUE	FISCAL YEAR ENDING 09/30/07	09/30/08	
Assessments (net)			
Residences	$531,544.00	$818,520.00	(1)
Lots	17,488.00	25,992.00	
SV Country Club	3,110.40	4,790.00	
Interest Income	7,500.00	10,000.00	(2)
Reserve	49,157.60	- 0 -	
TOTAL REVENUE	**$608,800.00**	**$859,302.00**	
EXPENDITURES			
Security	$211,200.00	$225,000.00	+ 13,800 (3)
Grounds Maintenance	56,000.00	62,000.00	+ 6,000 (4)
Grounds Beautification	20,000.00	30,500.00	+ 10,500 (4)
Storm Drainage	12,000.00	30,000.00	+ 18,000 (5)
Road Maintenance	142,500.00	200,000.00	+ 57,500 (6)
Administrative Contract	21,000.00	21,000.00	NC
Professional Services—Legal	11,000.00	12,500.00	+ 1,500
Professional Services—Accounting/Audit	3,000.00	4,500.00	+ 1,500 (7)
Computer Services	2,000.00	2,000.00	NC
Mailing Costs	4,500.00	5,000.00	+ 500
Office Supplies/Printing	5,200.00	5,200.00	NC
Insurance	9,600.00	9,600.00	NC
Utilities	12,600.00	12,600.00	NC
Property Tax	300.00	850.00	+ 550
General Manager Contract	21,000.00	27,000.00	+ 6,000 (8)
Capital Improvements	30,000.00	133,000.00	+103,000(9)
Gate Expense	3,600.00	3,600.00	NC
Contingency	8,000.00	40,000.00	+ 32,000 (10)
Roads Reserve Fund	30,000.00	30,000.00	NC
Reserve Fund	5,300.00	4,952.00	- 348
TOTAL EXPENDITURES	**$608,800.00**	**$859,302.00**	**+250,502**

(1) The revenue is projected for the annual assessment less five percent estimated uncollectible.
(2) Higher yield on interest bearing accounts.
(3) Increased costs for additional coverage of patrols and fuel.
(4) General improvements to quality and coverage, well for main entrance, and planting projects.
(5) Implement scheduled maintenance plan.
(6) Fund 20-Year Road Maintenance Plan for repaving 1/20th of road surface in 2008.
(7) Routinely scheduled full audit vs. compilation audit.
(8) Increased time coverage of General Manager contract.
(9) Secure commercial grade, aluminum fencing at approximately $30/linear foot for perimeters including 3000 linear feet for Rabon Farms boundary.
(10) Allowance for unexpected unbudgeted items.

2008 BUDGET REFLECTS 54% ASSESSMENT INCREASE.

RESIDENCES	$200/QTR
LOTS	$120/QTR
SVCC	$1,197.50/QTR

Proposed By-Laws Changes
Spring Valley Homeowners Association
Annual Meeting November 12, 2007

The Board of Directors proposes the following By-Laws changes for your review. Each of the current By-Laws is listed followed by the proposed changes. Each proposal will be voted upon independently at the Annual Meeting, November 12, 2007, or via the enclosed proxy.

1. Collection and Attorney Fees for Delinquent Accounts

Current By-Laws ARTICLE V: Financial Participation of Members, Section 2. Manner of Payment:

Each member's payment shall be due and payable quarterly. The Treasurer will notify members of the sum and due date. A service charge at the rate of 18% per annum, compounded quarterly, will be calculated on the balance of any member's account unpaid as of the beginning of the next succeeding quarter.

ADD:

Accounts that require legal remedy for collection will be assessed any and all expenses incurred by the Association including attorney fees, court costs, and filing fees.

2. Add Initiation Fee:

Add to current By-Laws; Article V: Financial Participation of Members

Section 4. Initiation Fees

After January 1, 2008, any new Regular Member or Associate Member of the Association shall be required to pay an initiation fee equal to 1 year of current assessments at date of closing. All monies collected from initiation fees are to be held in a dedicated account. If the Family Dwelling Unit or Residential Lot is sold, and the Member is in Good Standing, the initiation fee with no interest will be returned to the outgoing Member.

3. Reduce Fine Structure Time Frame

Current Rules and Regulation: Fine Structure for Abatement of Violations of Deed Restrictions, Spring Valley Homeowner Association (SVHA) Rules and Regulations and Ordinances of Richland County. (Adopted at the Annual Membership Meeting on November 8, 2004.)

Fines:

a)The "owner(s)" shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The "owner(s)" is/are expected to work in good faith with the General Manager to correct the violation within **thirty (30)** days.

b)The board has the right to fine "owner(s)" $50.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year after the **sixty (60)** day written notice to correct the violation.

c)With board approval, the "owner(s)" may be sued to correct the violation.

d)If the "owner(s)" does/do not correct the violation, the board can elect to assess the "owners(s)" based on the estimated cost to correct the violation.

PROPOSED:

Fines:

a)The "owner(s)" shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The "owner(s)" is/are expected to work in good faith with the General Manager to correct the violation within **fifteen (15)** days.

b)The board has the right to fine those "owner(s)" who have a violation $50.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year beginning after the **fifteen (15)** day written notice to correct the violation.

c)With board approval, the "owner(s)" may be sued to correct the violation.

d)If the "owner(s)" does/do not correct the violation, the board may elect to assess the "owners(s)" based on the estimated cost to correct the violation.

4. Landscape Plans with house

Current By-Laws Rules and Regulations; Architectural; 1. Structures

All new homes shall be a minimum of 3,000 square feet adjoining a lake or the golf course and 2,800 square feet elsewhere. Before construction may begin, a completion of deposit of $1,500 must be made with SVHA and a letter from the architectural committee approving the plans must be received.

PROPOSED:

All new homes shall be a minimum of 3,000 heated square feet adjoining a lake or the golf course and 2,800 heated square feet elsewhere. Before construction may begin, a completion deposit of $1,500 must be made with SVHA and a letter from the architectural committee approving the home and landscape plans must be received.

5. Use of Premises

Current Rules and Regulations: Use of Premises

Camper trailers, travel trailers, recreational vehicles, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles(s), unlicensed or stored vehicle(s) and/or commercial equipment of any kind.

a) None of the above are allowed to be parked, stored, or otherwise housed on any property in Spring Valley Subdivision unless excepted below:
b) Unlicensed or stored vehicles may be kept in an enclosed garage.
c) Utility trailers that support the premises may be stored in a garage or out of sight of all neighbors.
d) Boats may be stored in a garage. If the residence is on a lake, the boat, as permitted under the deed restrictions, may be stored on the residence premises concealed from view.

PROPOSED:

No vehicle deemed to be unsightly by the Association shall be permitted to remain on any portion of the Property so as to be visible from adjoining property or public or private thoroughfares.

a) Camper trailers, travel trailers, recreational vehicles, motor homes, mobile homes, boats, trailers, school buses, commercial vehicles(s), unlicensed or stored vehicle(s) and/or commercial equipment of any kind shall not be parked, stored or otherwise housed on any property in Spring Valley.
b) Unlicensed or stored vehicles may be kept in an enclosed garage
c) Utility trailers that support the premises may be stored in a garage or out of sight of all neighbors.
d) Boats may be stored in a garage. If the residence is on a lake, the boat, as permitted under the deed restrictions, may be stored on the residence premises concealed from view.
e) **All vehicles shall park in approved areas. These areas are garages, carports and paved driveways. No vehicles of any kind, whether owned or operated by Owner or tenant shall be routinely parked at anytime on any roadway, median, lawn, or common area of Spring Valley.**

6. Unsightly Conditions

Current: Rules and Regulations: Unsightly Conditions

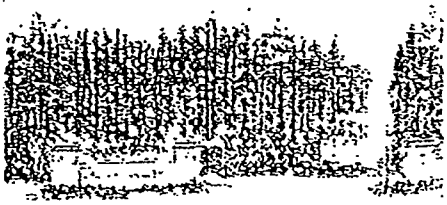
a) Each owner or tenant should prevent the accumulation of litter, trash, or rubbish on his or her property and keep the property clean and well maintained. This includes keeping grass, plants and other vegetation cut, free of leaves, and well trimmed, and picking up articles such as yard games and toys.
b) It also includes the placement of trash, debris, furniture and large appliances curbside at the appropriate times.

ADD:

Maintenance of Property

The owner or tenant (or both of them) of each lot shall have the duty of and responsibility for keeping lot, the adjacent street right-of way, and the improvements thereon, in a well maintained, safe, clean and attractive condition at all times.

c) Each owner or tenant should prevent the accumulation of litter, trash, or rubbish on his or her property and keep the property clean and well maintained. This includes keeping grass, plants and other vegetation cut, free of leaves, and well trimmed, and picking up articles such as yard games and toys.
d) It also includes the placement of trash, debris, furniture and large appliances curbside at the appropriate times.
e) During any construction, dirt, building debris and other construction-related refuse shall be cleaned from street and storm drains so as not to deposit silt and/or sediment and/or any debris into ditches, streams, ponds or any other area off the construction site. The Spring Valley Homeowners Association may require additional clean-up if deemed necessary to fulfill the obligation stated herein.
f) If in the opinion of the Association, the owner or tenant is failing in this duty and responsibility, then the Association may give the owner or tenant (or both) notice of such and the owner or tenant must, within (15) calendar days of this notice, undertake the care and maintenance required to restore the property to a safe, clean and attractive condition. If the owner or tenant fails to fulfill this duty and obligation after such notice, the Association shall have the right and power to implement a fine of ($50) per week, until abatement, or the fines reaches $1,500 per violation, per year.



Spring Valley Homeowners Association
PO Box 25246
Columbia, SC 29224
General Manager (803) 738-2410
Administrative Manager (803) 788-7711

Notice Of Annual Meeting

The annual meeting of the Spring Valley Homeowners Association will be held at Spring Valley Country Club, Columbia, SC on Tuesday, November 9, 2010 at 7:00 p.m. for the following purposes:

To elect directors for the ensuing year,
To approve the budget of the Association for 2011,
To vote on changes to the By-Laws,
To transact such other business as may properly come before the meeting or any adjournment thereof.

For the Board of Directors,

George Johnson
Secretary

Columbia, SC
October 4, 2010

THE BOARD ENCOURAGES EVERY MEMBER TO ATTEND. IF YOU ARE NOT SURE YOU WILL BE ATTENDING, THE BOARD REQUESTS YOU EXERCISE YOUR VOTE BY COMPLETING AND RETURNING THE ENCLOSED PROXY WITH YOUR ASSESSMENT PAYMENT. IF YOU ATTEND THE MEETING, YOU MAY RECOVER YOUR PROXY AND VOTE IN PERSON. MEMBERSHIP IN GOOD STANDING IS REQUIRED TO PARTICIPATE AND VOTE.

Nominating Committee Report
September 2010

Three (3) Directors will be elected to a regular three (3) year terms to replace three (3) Directors whose terms expire in 2010. The three Directors will be elected to fill the expired terms of Sandra Mathews, Ray Robinson, and Russ Templeton. One (1) Director will be elected to fill the remaining one (1) year of the Director's position whose term expires in 2011. This Director will be elected to fill the vacated term of Susan Hamilton.

The nomination committee consisting of Renée Gardner (Chrm), John Bannister and David Pittman submit the following slate to fill the vacancies which will occur at the end of the 2010 terms of the SVHA Board:

L. Hunter Limbaugh resides at 413 East Springs Road. A resident of Spring Valley for 12 years, Mr. Limbaugh has practiced law for 25 years in various capacities. He served as Chief Legal Counsel to Governor Beasley 1997-1998 and is Southeastern Counsel for the Trade Association Wine Institute of California since 2004. Mr. Limbaugh served on numerous commissions and subcommittees while in the House of Representatives. He currently serves on the American Diabetes Association-National Board of Directors. He is Vice-Chair of the Board, Chair, Advocacy Committee, Vice-Chair, Legal Advocacy Subcommittee; and President of the SC United FC Development Academy (soccer club). He and his wife, Nell, have two children.

Marc T. Fogarty resides at 74 Northlake Road. Mr. Fogarty and his wife, Chevis, have resided in Spring Valley for 5 years and have two daughters. He has been a member of Spring Valley Country Club for 9 years and served as Tournament Club Chairman from 2004-2009. He desires to continue to make Spring Valley the premier community in Northeast Columbia through his service on the board. His resume boasts of much success in achieving and surpassing financial goals in the various capacities in which he has served his employers. His qualifications include experience in developing business plans, marketing products, managing sales growth, inventory control, operations, budgeting, human resource management, financial statement review and profit & loss for two divisions with sales of $3M. He earned his B.S., in Management from the University of South Carolina in 1992.

John M. Uhl resides at 10 Westlake Road. Dr. Uhl has been a resident of Spring Valley for 30+ years. He and his wife Maxie have been married for 40 years and have two adult children. Dr. Uhl attended the University of Pennsylvania, earning a BA from the College of Arts and Science, and a DMD from the School of Dental Medicine. He served as the U.S. Naval dental officer (LT) for 6+ years. He has operated a private dental practice for the past 25 years. He served in institutional practice for 12 years at the S.C. Department of Corrections and the S.C. Department of Juvenile Justice (Retired 07). He is a Eucharistic Minister, Lector and worship leader at Trinity Episcopal Cathedral and is a 20 year volunteer at Still Hope Retirement Community as a Chaplain's Assistant.

The nomination committee consisting of Renée Gardner (Chrm), John Bannister and David Pittman also submit the following slate to fill the vacancy which will occur at the end of the 2011 terms of the SVHA Board:

Stephen E. Holtschlag resides at 236 Spring Valley Road. Mr. Holtschlag and his wife, Ann, have resided in Spring Valley since 1993. Mr. Holtschalg relocated from Pittsburgh, PA to serve as President/CEO of Consolidated Systems, Inc. He held that position until June 2007 when he semi-retired and has since served as Vice Chair of the BOD. He has had a passion for landscaping for the past 25 years. He is actively involved in Historic Columbia Foundation as Chairman of the Garden Restoration Committee which has restored the gardens at the Seibels House, and has been working on the Robert Mills property completing two antique Rose gardens with plants tracing from 1540 to 1907. Mr. Holtschlag has been responsible for designing and planting the gardens at St Peters Church on Assembly Street consisting of a series of meditation gardens as well as the revitalization of St Patrick's cemetery. Mr. Holtschalg has served the Association exceptionally since January when he was appointed to fill a position which was vacated prior to its term completion. He has already put his touch on beautifying the subdivision at the entrance circle and at other common areas throughout the neighborhood.

Rules and Regulations pg. 25

Unsightly Conditions

b) If in the opinion of the Association, the owner or tenant is failing in this duty and responsibility, then the Association shall give the owner written notice of such and the owner must undertake the care and maintenance required to restore the property to a safe, clean and attractive condition within fifteen (15) calendar days of such notice. If the owner fails to fulfill this duty and obligation after such notice, the Association shall have the right and power to implement a fine of $100 per week, until abatement, or the fines reach $1,500 per violation, per year.

Fines

b) The board has the right to fine owner(s) $100 weekly, until abatement, or the fine reaches $1,500 per violation per year after the fifteen (15) day written notice to correct the violation. If a property has three or more occurrences of the same violation during the same calendar year, a $100 fine will be levied immediately upon the third occurrence and any recurrence during that year. Additionally, if the violation is not corrected within one week, then the $100/week fine schedule will be implemented until abatement or the fines reach $1,500 per year, per violation.

Proxy Statement

This proxy statement is furnished in connection with the solicitation by the Board of Directors of Spring Valley Homeowners Association of proxies in the accompanying form to be used at the Annual Meeting of the Association to be held at Spring Valley Country Club, Columbia, South Carolina, on November 9, 2010 at 7:00 p.m. and at any subsequent time which may be necessary by its adjournment. The shares represented by any proxy given as a result of this request will be voted as specified. Any proxy can be revoked at any time before it is exercised should the person who executed it so desire. Any member who executed a proxy and attends the meeting may elect to vote in person rather than by proxy. A member may revoke his proxy at any time before it is exercised by filing written notice or later valid proxy with the Secretary of the Association.

Voting

As of October 1, 2010, there were 1082 family dwelling units and 43 residential lots and Spring Valley Country Club in Spring Valley. The owner of a family dwelling unit is classified as a Regular Member of the Association. The owner of a residential lot is classified as an Associate Member of the Association. The Spring Valley Country Club is defined as the Additional Member of the Association.

Board of Directors

Three (3) Directors will be elected to a regular three (3) year term to replace the expired terms of Sandra Matthews, Ray Robinson, and Russell Templeton. The Nominating Committee consisting of Renee Gardner (Ch.), John Bannister and David Pittman submits the following slate to fill the vacancies which will occur at the end of the 2010 terms of the SVHA Board:

To fill three (3) year terms: **Marc T. Fogarty**
L. Hunter Limbaugh
John M. Uhl

To fill one (1) year term: **Steve Holtschlag**

Current Board Members	Term Expires
George Johnson	2012
Paul Spencer	2012
Rodney Spivey	2012
Renee Gardner	2011
Harry Goldberg	2011
Steve Holtschlag	2011
Sandra Matthews	2010
Ray Robinson	2010
Russell Templeton	2010

Spring Valley Homeowners Association Proposed 2011 Budget

Account	2011	2010	Difference	Percent Change	
Income					
Assessment Income	756,440.00	756,440.00	0.00	0.00%	Residential Rate = $177.00/Qtr
Interest Income	8,325.00	8,325.00	0.00	0.00%	Lot Rate = $106.00/Qtr
Decal Income	1,080.00	1,080.00	0.00	0.00%	SV Country Club = $777.00/Qtr
Late Fee Income	1,200.00	1,200.00	0.00	0.00%	
Legal Frees Reimbursement	0.00		0.00	0.00%	
Owner Admin Fees Income	0.00		0.00	0.00%	
Owner Interest Income	0.00		0.00	0.00%	
Deed Restriction Violations Fees	0.00		0.00	0.00%	
Total Income	767,045.00	767,045.00	0.00	0.00%	
General & Administrative					
Accounting/Audit Fees	7,000.00	7,000.00	0.00	0.00%	
Reserve Study	0.00	7,500.00	-7,500.00	-100.00%	No Reserve Study expense
Legal	6,000.00	6,000.00	0.00	0.00%	
Postage & Mailing	4,025.00	4,025.00	0.00	0.00%	
Insurance	9,500.00	9,500.00	0.00	0.00%	
Office Supplies	4,145.00	6,075.00	-1,930.00	-31.77%	Based on 2010 actual
Rental Storage	708.00	708.00	0.00	0.00%	
Property Taxes	1,000.00	800.00	200.00	25.00%	
Bad Debt	6,000.00	6,000.00	0.00	0.00%	
Total G&A	38,378.00	47,608.00	-9,230.00	-19.39%	
Personnel					
Management Salary	55,800.00	55,800.00	0.00	0.00%	
Computer Services	2,460.00	2,460.00	0.00	0.00%	
Computer Software	1,000.00	2,660.00	-1,660.00	-62.41%	Software upgrade in 2010 will not recur
Seminar and Meeting Fees	500.00	0.00	500.00	0.00%	New budget item to provide for actual expenses
Training	500.00	500.00	0.00	0.00%	
Income Taxes	3,000.00	3,000.00	0.00	0.00%	
Total Personnel	63,260.00	64,420.00	-1,160.00	-1.80%	
Utilities 2011	15,267.00	14,540.00	727.00	5.00%	Anticipated rate increases
Maintenance					
Grounds	58,900.00	58,900.00	0.00	0.00%	
Beautification	29,400.00	28,000.00	1,400.00	5.00%	Funding for planned projects
Roads	195,500.00	209,900.00	-14,400.00	-6.86%	Based on consultant's estimate
Funded from Reserve	0.00	-25,000.00	25,000.00	-100.00%	No funding from Reserve
Sewer and Storm	55,000.00	55,000.00	0.00	0.00%	
Storm Drains Funded From Reserve	-20,000.00	-10,000.00	-10,000.00	100.00%	Funded from reserve to avoid assessment increase
Fencing	58,000.00	58,000.00	0.00	0.00%	
Gate Expense	6,400.00	6,400.00	0.00	0.00%	
Total Maintenance	383,200.00	381,200.00	2,000.00	0.52%	
Security	261,265.00	253,319.00	7,946.00	3.14%	Anticipated increase
Total	761,370.00	761,087.00	283.00	0.04%	

Unsightly Conditions (Adopted at the Annual Membership Meeting on November 15, 2005 and Amended November 12, 2007.)

a) Each owner or tenant should prevent the accumulation of litter, trash, or rubbish on his or her property and keep the property clean and well maintained. This includes keeping grass, plants, and other vegetation cut, free of fallen leaves, and well trimmed, and picking up articles such as yard games and toys. A well maintained yard shall be expected to be regularly maintained. Occasional cutting, once weeds have created an eyesore, is not acceptable. Grass that has been allowed to deteriorate to significant areas of sand and weeds, with only occasional patches of grass is not acceptable. All landscaping and grounds shall be maintained in a condition to preserve the values of all properties within the community.

b) It also includes the placement of trash, debris, furniture, and large appliances curbside at the appropriate times.

c) During any construction, dirt, building debris and other construction-related refuse shall be cleaned from street and storm drains so as not to deposit silt and/or sediment and/or any debris into ditches, streams, ponds or any other area off the construction site. The Association may require additional clean-up if deemed necessary to fulfill the obligation stated herein.

d) If in the opinion of the Association, the owner or tenant is failing in this duty and responsibility, then the Association may give the owner or tenant (or both) notice of such and the owner or tenant must, with fifteen (15) calendar days of notice, undertake the care and maintenance required to restore the property to a safe, clean and attractive condition. If the owner or tenant fails to fulfill this duty and obligation after such notice, the Association shall have the right and power to implement a fine of fifty dollars($50) per week, until abatement, or the fines reach $1,500 per violation, per year.

Fine Structure for Abatement of Violations of Deed Restrictions, Spring Valley Homeowner Association (SVHA) Rules and Regulations and Ordinances of Richland County. (Adopted at the Annual Membership Meeting on November 8, 2004 and Amended November 12, 2007)

Fines

a) The owner(s) shall be informed by mail by the SVHA General Manager of any violations of the Deed Restrictions, SVHA Rules and Regulations, and Richland County Ordinances. The owner(s) is/are expected to work in good faith with the General Manager to correct the violation within fifteen (15) days.

b) The board has the right to fine owner(s) $50.00 weekly, until abatement, or the fine reaches $1,500.00 per violation per year after the fifteen (15) day written notice to correct the violation.

c) With board approval, the owner(s) may be sued to correct the violation.

d) If the owner(s) does/do not correct the violation, the board can elect to assess the owner(s) based on the estimated cost to correct the violation.

EXHIBIT 5

to Affidavit of Beth Swindler

Spring Valley Homeowners Association
PO Box 25246
Columbia, SC 29224
General Manager (803) 788-2410
Administrative Manager (803) 788-7711

04 October 2011

Mr. Coley S. Brown
6436 Westshore Rd
Columbia, SC 29206

Dear Mr. Brown,

This letter is a follow-up to our conversation this morning about the for sale or rent sign that you are displaying at 118 Spring Valley Rd.

Your decision to install the sign is a violation of our community's deed restrictions and creates an 'unsightly condition.'

This means that you have fifteen (15) days to remove the sign. If it is still in place on 19 October 2011, then the fine schedule of one hundred (100) dollars per week will get underway. The schedule will run for fifteen (15) weeks. If the sign is removed before the fifteen (15) weeks are concluded, the fine will apply to the weeks it was displayed.

Thank you for your attention to this matter.

Cordially,

Carl A. Voges, General Manager

Spring Valley Homeowners Association
PO Box 25246
Columbia, SC 29224
General Manager (803) 788-2410
Administrative Manager (803) 788-7711

20 October 2011

Mr. Coley S. Brown
8436 Westshore Rd
Columbia, SC 29206

Dear Mr. Brown,

This letter is a follow-up to the letter of 04 October 2011.

The for sale / rent sign violates our community's deed restrictions and creates an "unsightly condition."

Since the sign was still in place on 19 October 2011, then the fine schedule of one hundred (100) dollars per week has gotten underway. The schedule will run for fifteen (15) weeks. If the sign is removed before the fifteen (15) weeks are concluded, the fine will apply to the weeks it was displayed.

Thank you for your attention to this matter.

Cordially,

Carl A. Voges, General Manager

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn B. Beighley
* Mediator/Arbitrator

P.O. Box 50143
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

October 23, 2011

VIA U.S. MAIL
Mr. Carl A. Voges, General Manager
Spring Valley Homeowners Association
P.O. Box 25246
Columbia, SC 29224

Re: Restrictive covenants regarding "for sale" signs
My client: S. Coley Brown

Dear Mr. Voges:

Please be advised that I represent Mr. S. Coley Brown. I have reviewed your letter to Mr. Brown dated October 4, 2011. Based on the documents I have reviewed and what I understand has occurred, I do not believe the Association is correct to take the position outlined in that letter.

First, the information guide provided to Mr. Brown when he purchased property in Spring Valley quotes the restrictive covenants as stating that no "'Sale' or 'Rent' signs or other types of advertising or billboards shall be permitted . . . except that in cases of hardship, subject to prior approval by SVHA, one 'For Sale' sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale." The same language is in the information guide I printed from your website yesterday. The Association's apparent belief that "for sale" signs are absolutely prohibited by the restrictions is at odds with this language. Further, Mr. Brown advises that the Association has categorically refused to undertake any assessment of whether he is in a case of hardship. The Association has the obligation to make a good faith determination of whether a case of hardship exists. Please outline what the Association's process for making that determination is and let me know what information you would like from Mr. Brown in order to begin that determination process.

As the Association is not a governmental entity, I am curious about why the Association believes it can levy fines. Please provide me with the Association's basis for the belief that it has the power and authority to levy fines. (Also, how does the sign in question create an "unsightly condition" as stated in your letter?)

Thank you for your attention to this matter. Kindly provide the information requested on or before November 4, 2011. I look forward to hearing from you.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/
cc: Mr. Coley S. Brown

CERT. HARRY L. MEDIATOR

REPLY TO COLUMBIA OFFICE

November 7, 2011

VIA FACSIMILE 779-6700 ONLY
Andrew S. Radeker, Esquire
Post Office Box 50143
Columbia, South Carolina 29250

RE: Your Client: S. Coley Brown
My Client: Spring Valley Homeowners Association

Dear Mr. Radeker:

Please be advised that we have set aside December 8, 2011 at 6:30 p.m. for your client to address the Homeowners Association Board on the issue of the alleged hardship necessitating the For Sale sign on Mr. Brown's property located at 118 Spring Valley Road. The meeting will be held at the Spring Valley Country Club.

I refer you to the rules and regulations of the Homeowners Association which sets forth the fine structure for violations of the Deed Restrictions. These rules and regulations give the Board the authority to assess fines for any such violations.

Should you have any questions, please let me know.

Very truly yours,

Harry L. Goldberg

HLG/jrs
cc: Spring Valley Homeowners Association
Post Office Box 25246
Columbia, South Carolina 29224

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

CHARLESTON
Litigation, Real Estate & REO
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Fax: (843) 577-5135

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

bcc: Rodney Spivey
2124 Bermuda Hills Road
Columbia, South Carolina 29223

INKEL
LAW FIRM LLC

FACSIMILE COVER SHEET

DATE: November 7, 2011

SEND TO: Andrew S. Radeker, Esquire

COMPANY: _____ FAX NO: 779-6700

ORIGINATOR: Harry L. Goldberg FAX NO: (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET: 2

CLIENT CODE: _____

MESSAGE: _____

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fax.frm

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Columbia, SC 29201
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Foreclosure
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North Charleston, SC 29405
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Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

November 15, 2011

11/18 per Carl- week 5 of fine sched

Via U. S. Mail
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: S. Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Mr. Radeker:

Kindly confirm that your client will be present for the Homeowner's Association Board meeting on December 8, 2011 at 6:30 p.m. at the Spring Valley Country Club. Thank you very much.

Very truly yours,

Harry L. Goldberg

HLG/jrs

M:\Lit\CLIENT\44112\ltr to radeker.11.15.11.wpd

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
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Fax: (803) 252-0786

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Foreclosure
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P.01

TRANSACTION REPORT

NOV-18-2011 FRI 04:00 PM

FOR: FINKEL LAW FIRM LLC 1 803 252 0786

SEND

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	MH DP
NOV-18 03:58 PM	7786700	24"	2	FAX TX	OK	927

TOTAL : 24S PAGES: 2

FINKEL LAW FIRM LLC

FACSIMILE COVER SHEET
For Columbia Office

DATE: 11-18-11

SEND TO: Andrew Radeker, Esq.

COMPANY: _____ FAX NO.: (803) 779-6700

ORIGINATOR: Harry Goldberg, Esq. FAX NO.: (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET: 2

MESSAGE:

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Columbia, SC 29201
Tel: (803) 252-0786
Fax: (803) 744-1556

CHARLESTON
Affiliate, Bell Family & Reid
1235 Fifth Floor Drive, Suite 203
Post Office Box 213 (29402)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5105

CHARLESTON
Associate
1235 Fifth Floor Drive, Suite 203
Post Office Box 11889 (29211)
North Charleston, SC 29406
Tel: (843) 577-5460
Fax: (843) 744-1556

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

11/21 PC Andrew Radeker will call him to take down signs. Do we intend to levy fines?

November 18, 2011

Via Fax to (803) 779-6700 and U. S. Mail
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: S. Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Mr. Radeker:

I understand that Mr. Brown has now sold his house and that there is a sold sign on the property.

Please have all signs removed immediately.

Very truly yours,

Harry L. Goldberg

HLG/jrs
cc: Spring Valley Homeowner's Association

bcc!
Spivey

M:\CLIENT\44112\ltr to radeker.11.18.11.wpd

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

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Litigation, Real Estate & REO
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Post Office Box 41489 (29423)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

November 21, 2011

Via Fax to (803) 779-6700 and U. S. Mail
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: S. Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Drew:

I have polled the Board and it is the consensus of opinion that the fines which have been levied should remain in place. Thus, we will go forward on December 8, 2011 as originally scheduled so that Mr. Brown can make his case for a hardship.

As we discussed on the telephone, in view of the fact that a contract for the sale of the home has been signed, there clearly is no hardship at this point and thus all signs need to be removed immediately.

With best regards,

Very truly yours,

Harry L. Goldberg

HLG/jrs
cc: Spring Valley Homeowner's Association

BCC: Rodney Spivey

lr.11.21.11.wpd

Tel: (803) 765-2935
Fax: (803) 252-0786

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3955 Faber Place Drive, Suite 200
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North Charleston, SC 29405
Tel: (843) 577-5460
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P.01

TRANSACTION REPORT

NOV-21-2011 MON 02:59 PM

FOR: FINKEL LAW FIRM LLC 1 803 252 0786

SEND DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
NOV-21 02:58 PM	7798700	21"	2	FAX TX	OK	938	

TOTAL : 21S PAGES: 2

FINKEL LAW FIRM LLC

FACSIMILE COVER SHEET
-for Columbia Office

DATE: November 21, 2011

SEND TO Andrew S. Radeker, Esquire

COMPANY _____ FAX NO (803) 179-6700

ORIGINATOR: Harry L. Goldberg, Esquire FAX NO. (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET 2

CLIENT CODE: S. Coley Brown

MESSAGE: _____

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Fax: (803) 782-0986

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Wachovia Real Estate & RED
1339 Pitt Drive, Suite 200
Post Office Box 41118 (29423)
North Charleston, SC 29406
Tel: (843) 577-5460
Fax: (843) 577-3103

CHARLESTON
Downtown
1339 Pitt Drive, Suite 200
Post Office Box 31118 (29411)
North Charleston, SC 29403
Tel: (843) 577-5460
Fax: (843) 577-3103

P. 01

TRANSACTION REPORT

NOV-23-2011 WED 02:30 PM

FOR: FINKEL LAW FIRM LLC 1 803 252 0786

SEND DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
NOV-23 02:30 PM	7796700	15"	1	FAX TX	OK	941	

TOTAL : 15S PAGES: 1

FINKEL LAW FIRM LLC

FACSIMILE COVER SHEET
for Columbia Office

DATE: 11/23/11

SEND TO: Drew Cauker

COMPANY: _____ FAX NO.: 779-6700

ORIGINATOR: H. Grooms FAX NO.: (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET: 1

MESSAGE: RE: Corey Brown

DREW- As I last night, the sign had NOT been removed.
Please take care of this ASAP.
Have a good Thanksgiving.
H Grooms

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Fax: (803) 252-0724

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Lightsey, Wall, Ecker & Hill
1905 Tobias Gadsden Building, Suite 300
Post Office Box 7411 (29422)
North Charleston, SC 29405
Tel: (843) 577-2300
Fax: (843) 577-3131

GREENVILLE
Finkel Law Firm LLC
2553 Pelham Drive, Suite 201
Post Office Box 7113 (29606)
Greenville, SC 29609
Tel: (864) 877-5150
Fax: (864) 765-0943

FINKEL
LAW FIRM LLC

FACSIMILE COVER SHEET
for Columbia Office

DATE: 11/23/11

SEND TO: Drew Limeker

COMPANY: _____ FAX NO.: 779-6700

ORIGINATOR: H. Gaillard FAX NO.: (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET: 1

MESSAGE: Re: Casey Brown

Drew- As of last night, the sign had not been removed.

Please take care of this ASAP.

Have a good Thanksgiving.

H Finkel

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Fax: (843) 577-5135

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

December 6, 2011

W/H McDrew -

Via Fax to (803) 779-6700
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: S. Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Drew:

Please advise whether you and/or your client will be attending our December 8, 2011 meeting at 6:30 p.m. at the Spring Valley Country Club.

Although the "For Sale" sign has been removed, there remains the issue of the fines which have been imposed which total approximately $500.00.

I look forward to hearing from you.

Very truly yours,

Harry L. Goldberg

HLG/jrs

M:\LJ\CLIENT\44112\ltr fax to rndeker.12.6.11.wpd

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

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Post Office Box 41489 (29423)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
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North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

P. 01

TRANSACTION REPORT

DEC-06-2011 TUE 04:41 PM

FOR: FINKEL LAW FIRM LLC 1 803 252 0786

SEND DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
DEC-06 04:40 PM	7796700	20"	2	FAX TX	OK	966	

TOTAL : 20S PAGES: 2

FINKEL
LAW FIRM LLC

FACSIMILE COVER SHEET
for Columbia Office

DATE: December 6, 2011

SEND TO: Andrew S. Redeker, Esquire

COMPANY: FAX NO: (803) 779-6700

ORIGINATOR: Harry L. Goldberg, Esquire FAX NO. (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET: 2

CLIENT CODE: S. Coley Brown

MESSAGE:

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Fax (803) 252-0724

Charleston
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1235 Post Office Street, Suite 300
Post Office Box 41403 (29464)
Mount Pleasant, SC 29464
Tel (843) 577-5460
Fax (843) 577-3135

Charleston
Insolvency
1235 Post Office Street, Suite 300
Post Office Box 21171 (29413-1171)
North Charleston, SC 29405
Tel (843) 577-5151
Fax (843) 723-6015

LAW OFFICES
HARRISON & RADEKER, P.A.
823 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn H. Beightley
* Admitted in DC

P.O. Box 5013
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

December 8, 2011

VIA HAND DELIVERY BY COLEY BROWN
Board of Directors, Spring Valley Homeowners Association
c/o Harry L. Goldberg, Esq.

Re: Authority of homeowners' associations to fine their members

Dear Members of the Board:

As you know, I represent Mr. S. Coley Brown. I will not be attending the meeting this evening, and I authorize you to communicate directly with Mr. Brown at that hearing. I believe Mr. Brown is quite capable on his own of expressing to you the hardship that called for him to place a for sale sign on his Spring Valley property and of relating the facts of your Association's prior summary refusal to evaluate whether he should be allowed to put up a for sale sign.

I write to address a different matter: whether the Association may lawfully fine any of its members. It cannot. While our state appellate courts have never been presented with this question, courts in other states that have dealt with it have concluded that, since the power to levy fines is a governmental power, unless some statute has been enacted by a state in which the state authorizes homeowners' associations to fine their members, such associations lack the ability to do so – even if their covenants or by-laws say they can. I enclose a copy of two such decisions with this letter: Unit Owners Ass'n of Buildamerica-Ft. Gillman, 292 S.E.2d 378 (Va. 1982), and Vernon Manor Co-op. Apts., Section 1 v. Salating, 178 N.Y.S.2d 895 (1958). South Carolina has no statute authorizing homeowners' associations to fine their members; thus, neither your association nor any other in this state has the power to do so. It does not matter that the by-laws say that you can. I trust that if the Association's by-laws said the Association could imprison a member for violating Spring Valley deed restrictions, no one on this board would believe that it would be lawful for the Association to do so. Fines are no different.

Furthermore, your by-laws cannot expand the authority granted under the Spring Valley covenants. The covenants do not authorize fines but only authorize periodic assessments. Plainly, a fine is not a periodic assessment.

Thank you for your attention. I trust that you will act in accordance with the law.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/
Enclosures

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

December 9, 2011

Via U. S. Mail
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Drew:

The Spring Valley Homeowner's Association Board heard from Mr. Brown last night. It is the decision of the Board that the fines remain in place.

I am glad to discuss this with you further if you so desire.

Very truly yours,

Harry L. Goldberg

HLG/jrs

bcc:
Spivey
SVHO

EXETON
ial, Real Estate & REO
ber Place Drive, Suite 200
ice Box 41480 (29423)
harleston, SC 29405
3) 577-5460
3) 577-5135

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

January 17, 2012

Via U. S. Mail
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Drew:

Kindly advise as to whether your client intends to pay the $500.00 assessment for fines pursuant to my letter of December 9, 2011.

Very truly yours,

Harry L. Goldberg

HLG/jrs

bcc: Spivey
SVHO

Fax: (803) 252-0786

LEXTON
...on, Real Estate & REO
...ber Place Drive, Suite 200
...ice Box 41489 (29423)
..... Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
Foreclosure
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North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

January 31, 2012

Via Fax to (803) 779-6700 and U. S. Mail
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: S. Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Drew:

I have not heard from you pursuant to my letter of January 17, 2012. Please advise as to whether your client will pay this assessment and avoid further proceedings.

Very truly yours,

Harry L. Goldberg

HLG/jrs

R. Spivey
SVHOA
BCC's

M:\LH\CLIENT\44112\fax ltr to radeker.1.31.12.wpd

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

CHARLESTON
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North Charleston, SC 29405
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P.01

TRANSACTION REPORT

JAN-31-2012 TUE 10:38 AM

FOR: FINKEL LAW FIRM LLC 1 803 252 0786

SEND.

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
JAN-31	10:38 AM	7796700	20"	2	FAX TX	OK	156	

TOTAL : 20S PAGES: 2

FINKEL
LAW FIRM LLC

FACSIMILE COVER SHEET
for Columbia Office

DATE: January 31, 2012

SEND TO: Andrew S. Radeker, Esquire

COMPANY _____ FAX NO (803) 779-6700

ORIGINATOR: Harry L. Goldberg, Esquire FAX NO (803) 252-0786

TOTAL PAGES INCLUDING COVER SHEET: 2

CLIENT CODE: S. Coley Brown
Our File No.: 696S0-44112

MESSAGE

CONFIDENTIALITY NOTICE

Unless otherwise indicated or obvious from the nature of this transmittal, the information contained in this fax message is attorney-client privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient (or the employee or agent responsible to deliver it to the intended recipient), you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the Columbia address below.

COLUMBIA
1901 Main Street, Suite 1100
Post Office Box 11390 (29211)
Columbia, SC 29201
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Fax: (803) 252-0786

CHARLESTON
Liberty, Rice Kirby & Pyle
2055 Palm Row Drive, Suite 300
Post Office Box 61112 (29419)
North Charleston, SC 29405
Tel: (843) 577-3450
Fax: (843) 577-3135

CHARLESTON
Finkelstein
2055 Palm Row Drive, Suite 301
Post Office Box 11112 (29115)
North Charleston, SC 29405
Tel: (843) 577-3450
Fax: (843) 723-0033

FINKEL
LAW FIRM LLC

HARRY L. GOLDBERG
CERT. MEDIATOR & ARBITRATOR

REPLY TO COLUMBIA OFFICE

February 7, 2012

a/k/a R/h Drew-
won't pay
offer to split 50
will GB
NO

Via Fax to (803) 779-6700
Andrew S. Radeker, Esquire
Attorney-at-Law
Post Office Box 50143
Columbia, South Carolina 29250

Re: Your Client: S. Coley Brown
My Client: Spring Valley Homeowner's Association
Our File No.: 69650-44112

Dear Drew:

This is now the third letter that I have written concerning your client's intentions to pay the assessment, but I have not received any response from you. This will be my last letter. Please let me hear from you today.

Very truly yours,

Harry L. Goldberg

HLG/jrs

M:\Lit\CLIENT\44112\fax ltr to radeker.2.7.12.wpd

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
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North Charleston, SC 29405
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Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

Charles A. Krawczyk, Esquire
ckrawczyk@finkellaw.com

April 9, 2012

NOTICE OF RIGHT TO CURE

THIS IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND REGULAR MAIL

Coley Brown
6436 Westshore Dr.
Columbia SC. 29206

RE:	YOUR ACCOUNT:	Spring Valley Homeowners Assoc.
	AMOUNT DUE:	$500.00
	PAY BEFORE:	May, 9 2012

Dear Mr. Brown:

As legal counsel for Spring Valley Homeowners Association., (the "Creditor"), we hereby serve you with notice that you are in breach of the terms of the governing documents of the Spring Valley homeowners association which are legally binding upon you pursuant to your deed, and under which you have an ongoing legal obligation to pay general and certain special assessments, as well as any applicable fees, fines, and service charges on outstanding amounts.

To cure the breach, it will be necessary for you to promptly forward full payment of your outstanding balance to this law office in the amount of $500 which includes payments and/or fees that are due and owing.

If you do not pay $ 500 by Wednesday, May 9 2012, the Creditor may exercise its rights under the law and the governing documents. These rights include, without limitation, the

EXHIBIT
12

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax; (803) 252-0786

CHARLESTON
Litigation, Real Estate & REO
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Post Office Box 225 (29402)
North Charleston, SC 29405
Tel: (843) 577-5460

CHARLESTON
Foreclosure
3955 Faber Place Drive, Suite 200
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460

right of the Creditor to invoke its power under the Contract to demand that it be paid immediately, and the right to foreclose on the subject property.

You have the right to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

If the funds are not received on or Wednesday May 9, 2012, the Creditor may declare the secured sum immediately due and payable without further demand and may institute legal action in connection with its rights and remedies available to it under the Contract and South Carolina law. In such legal proceedings, the Creditor shall be entitled to collect all expenses incurred thereby, including, but not limited to, reasonable attorney's fees of the unpaid debt and costs, all of which shall be additional sums secured by the loan instruments in accordance with applicable law. The loan instruments and South Carolina law may provide other rights and obligations of yours and the Creditor which are not hereby raised or released.

If you have any questions, write or telephone the Creditor or my office immediately.

PLEASE FIND ATTACHED THE NOTICE REQUIRED BY THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT. THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT, AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

With kind person regards, we are

Yours very truly,

FINKEL LAW FIRM LLC

Charles Krawczyk

cc: Board of Directors, Spring Valley Homeowners Association

NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. SECTION 1601, AS AMENDED

1. The amount of the debt is $500

2. The Creditor is: Spring Valley Homeowners Association
c/o Beth Swindler
PO Box 25246
Columbia, SC 29224

3. The debt described in the letter attached hereto will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days, dispute the validity of the debt or some portion thereon.

4. If you, the Debtor, notify the Creditor's law firm thirty (30) days that the debt of any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.

5. Communications to Creditor's attorney should be sent to:

Charles Krawczyk, Esquire
Finkel Law Firm LLC
Post Office Box 1799
Charleston, South Carolina 29202

6. This notice should not be construed as providing any grace period.

THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn B. Beighley
* Mediator/Arbitrator

P.O. Box 50143
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

May 3, 2012

VIA FACSIMILE TO (803) 252-0786
& U.S. MAIL
Charles A. Krawczyk, Esq.
Finkel Law Firm, LLC
P.O. Box 1799
Columbia, SC 29202

Re: My client: S. Coley Brown
Your client: Spring Valley Homeowners Association
Your letter to Mr. Brown of April 9, 2012

Dear Charles:

As Harry Goldberg of your firm already knows, I represent Mr. S. Coley Brown. I write to inform you that my client disputes the validity of the debt referenced in your letter and requests that verification of that debt be mailed to me as his attorney.

Thank you for your attention. I look forward to hearing from you.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/

cc: Mr. S. Coley Brown

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 779-2211
(803) 779-6700 (FAX)

Attorneys at Law
Mediation/Arbitration

P.O. Box 50143
Columbia, SC 29250

FACSIMILE TRANSMITTAL SHEET

TO: Charles Krawczyk, Esq.	FAX NO: (803) 252-0786
COMPANY: Finkel Law Firm, LLC	DATE: 5/3/12
FROM: Kevin Pain	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: S. Coley Brown Spring Valley Homeowners Association	CASE NUMBER:

☐ URGENT FOR REVIEW ☐ PLEASE COMMENT PLEASE REPLY ☐ PLEASE RECYCLE

The information contained in this facsimile message is attorney privileged and confidential information intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank You.

NOTES/COMMENTS:

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn B. Belghley
* Mediator/Arbitrator

P.O. Box 50143
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

May 3, 2012

VIA FACSIMILE TO (803) 252-0786
& U.S. MAIL
Charles A. Krawczyk, Esq.
Finkel Law Firm, LLC
P.O. Box 1799
Columbia, SC 29202

Re: My client: S. Coley Brown
Your client: Spring Valley Homeowners Association
Your letter to Mr. Brown of April 9, 2012

Dear Charles:

As Harry Goldberg of your firm already knows, I represent Mr. S. Coley Brown. I write to inform you that my client disputes the validity of the debt referenced in your letter and requests that verification of that debt be mailed to me as his attorney.

Thank you for your attention. I look forward to hearing from you.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/

cc: Mr. S. Coley Brown

EXHIBIT 6

to Affidavit of Beth Swindler

Spring Valley Homeowners Association
Board of Directors Meeting
Spring Valley Country Club
December 8, 2011
6:30 PM

President Rodney Spivey called a meeting of the Spring Valley Homeowners Association to order at 6:29 PM. Board Members present were George Johnson, Hunter Limbaugh, Harry Goldberg, Marc Fogarty, Renee Gardner, Paul Spencer, John Uhl, and Steve Holtschlag, Beth Swindler was also in attendance with the visitors listed below.

I. Call to Order and Introduction of Visitors — Rodney Spivey

President Spivey recognized Coley Brown

A. Hardship Application to allow "For Sale/Rent" Sign — Coley Brown

Mr. Brown read a letter from his attorney, Harrison Radeker. The attorney opined that the SVHOA could not fine its members. Mr. Brown stated that he just got back from Jamaica and didn't have time to prepare copies for all of the board members.

Mr. Brown explained that he put up the "For Sale" sign in his yard because he was stuck with two houses because the sale of one of his homes fell through. The house in Spring Valley was not his primary residence.

He admitted that his deed says that no signs are permitted without prior approval of the board and that he never obtained prior approval.

He obtained an interpretation by Edwin Cooper that he could put up a sign.

He wrote Russell Templeton in 2009 and told him that he was going to actively solicit the sale of his property; in that letter he provided Russ with pictures of acceptable signs. Russ Templeton wouldn't look at the sign he proposed so Mr. Brown put up the sign anyway.

It is his opinion that the SVHOA should allow signs. He thought his sign was attractive. When threatened with fines he decided to keep his sign up until he was told that he wasn't going to be fined. He doesn't want to be fined and he wants a standard sign for Spring Valley. He asked Russell Templeton to approve the sign but Mr. Templeton would not meet with him.

Mr. Brown did not provide a hardship request to the Board prior to putting up the signs, which request is required by the deed restrictions.

Harry Goldberg has been in contact with Mr. Brown's attorney. Mr. Goldberg advised the board that there is legal support for the board to levy fines.

Motion by Hunter Limbaugh to impose the fine; seconded by Paul Spencer; the motion passed unanimously

II. New Business

A. Perimeter Fencing at 440 Valley Springs

As part of our normal fencing project, a new fence is to be built behind 440 Valley Springs. Harry Goldberg informed the Board that the homeowner wants slats included in the fence. A proposal was prepared which is incorporated herein by reference. Slats would cost an additional $1300.00.

Renee Gardner thought the car lights turning east could affect the homeowner; by cutting out the vegetation it would decrease the blockage; thus she believes that slats should be installed.

The matter was tabled until the January meeting.

B. Election of 2012 Board Officers

President Rodney Spivey presented the following slate: Paul Spencer , Vice President; George Johnson, Secretary; Rodney Spivey, President. Motion made by Steve Holtschlag to elect the slate as presented. The motion was seconded by John Uhl. The Motion passed unanimously

Steve Holtschlag, Marc Fogarty and Paul Spencer volunteered to review the by-laws to see if they needed to be updated.

III. Executive Session Rodney Spivey

Motion was made by John Uhl and seconded by Steve Holtschlag. The motion carried unanimously.

Motion made at 7:32 to exit executive session by Hunter Limbaugh; Seconded by Marc Fogarty . The motion carried unanimously.

IV. Adjourn

Motion was made at 7:32 by Hunter Limbaugh to adjourn; Second by Marc Fogarty.

EXHIBIT 7

to Affidavit of Beth Swindler

SPRING VALLEY HOMEOWNERS ASSOCIATION
BOARD OF DIRECTORS MEETING
SPRING VALLEY COUNTRY CLUB
February 23, 2012

President Rodney Spivey called a meeting of the Spring Valley Homeowners Association to order at 6:32 p.m. Board Members present were Renee Gardner, Harry Goldberg, Steve Holtschlag, George Johnson, Paul Spencer, and John Uhl.

Also in attendance were Beth Swindler, Carl Voges, and the visitors listed below.

I. Call to Order and Introduction of Visitors

A. President Spivey called the meeting to Order. He recognized John Bannister, Bill Cantwell, Tom Cross, Ronald Beebe, Nancy Stone-Column and Carolyn C. Nelson.

B. Nancy Stone-Column, Richland County Conservation Easement Dept.

1. Ms. Stone-Column is the Conservation Coordinator for Richland County. The Conservation Easement Department is a millage agency established by council in 1998 to preserve resources. Resources are protected by using conservation easements and grants. A conservation easement restricts permanently the type and amount of development on your land. It prevents your land from being developed forever. Conservation easements are set up through a land trust or governmental agency. A landowner gives up the right to develop and/or subdivide the land. Giving up the rights has a value; once it is quantified by appraisal the owner gets a tax benefit. The appraisal is based on the conservation agreement. The Richland County Conservation Department pays for (and picks) the appraiser. The charitable donor gets the tax credit. The benefit to SVHOA is that there would be no development of the property.
2. In March, she viewed the property owned by the Coopers at the entrance. Its about 26 acres, Little Jackson Creek flows through it. It would qualify as

an easement. Once an easement is approved, a person comes out yearly to monitor the easement. Steve Holtschlag pointed out that there are two parcels. Ms. Stone-Column agreed that this needed to be clarified.

3. Harry Goldberg, Rodney Spivey, and Steve Holtschlag will meet with the property owner to further investigate the possibility of purchasing the land

C. Carolyn Nelson, 200 Valley Springs Road

1. Ms. Nelson addressed the Board regarding her partially completed fence. She stated that this situation has been going on since August, 2011. She stated that she was not aware that she was supposed to request approval. She disagrees with the recommendation made by Mr. Voges. She wants a special exemption for the poles she already has placed in the ground. She presented a drawing that incorporated the suggested fencing made by Mr. Voges. The fence she proposes would be six feet tall.
2. President Spivey pointed out the fence she proposes violates the by-laws since the fence runs towards the front of the house; he specifically pointed out the fence restrictions in the By-laws.
3. Harry Goldberg asked if the fence could be four feet tall; Ms. Nelson was reluctant to build a four foot fence since it would not keep her dog in the yard. The dog is currently in Atlanta.
4. Ms. Nelson admitted that she had multiple conversations with Mr. Voges who made multiple suggestions.
5. It is clear that the fence proposed by Ms. Nelson violates the SVHOA By-laws.

II. **Approval of Minutes**

A. President Spivey asked for any additions or corrections to the January 26, 2012, minutes. Steve Holtschlag pointed out that he did have a written report. John Uhl pointed out that under Architectural, two pools have been approved: 621 S. lake and 420 S. Lake. A motion was made by Harry to approve the minutes with those corrections. The motion was seconded by Steve Holtschlag and carried unanimously.

B. President Spivey asked Steve Holtschlag and Paul Spenser to look at email votes when reviewing the by-laws.

III. Treasurer's Report

A. Marc Fogarty provided a written report which is incorporated herein by reference. The report was presented by Beth Swindler. Ms. Swindler pointed out the following:

1. Total cash on hand: $820,415.45
2. Total delinquencies as of January 19, 2012: 90 residents
3. Total delinquencies as of February 16, 2012: 61 (totaling $79,703.12)

B. For January, current $196,950.85; little ahead on collections.

C. Annual Financial Statement of FYE 9/30/2011

1. The audit report was reviewed. Two years of compilation were done.
2. Income tax paid: $2122.00; 30% tax rate for Homeowners Associations
3. No changes to the notes except: reduction of one lot (2 lots were combined)
4. Reserve study report was incorporated into the financial notes
5. We are under the FDIC limits on our deposits
6. Although the board chose to not increase dues for the reserve study at this time, this decision will be periodically reviewed
7. Motion by John Uhl to accept the audit as information, Steve Holtschlag seconded the motion; it passed unanimously.

IV. Committee Reports

A. Lakes

1. Hunter Limbaugh was not present. He told President Spivey that a public meeting will be held on Little Jackson Creek in March

B. Roads

1. Renee Gardner presented a written report which is incorporated herein by reference. She highlighted the following:
   a) Roads: Expect to hear back form the consultant on the bids for resurfacing.

(1) Motion made by Paul Spencer to allow Renee Gardner to accept a bid not to exceed $200,000.00. The motion was seconded by John Uhl and the motion passed unanimously.

b) Drainage

(1) The channel above Old Springs Road was dug out. The homeowner's yard was torn up but it will be addressed. The flow of the channel was not changed so a permit was not needed

(2) No resident calls were made

C. Security and Gates

1. Paul Spencer provided a written report which is incorporated herein by reference. He stated that one issue over the month was a party by teenagers that required Richland County Sheriff's Department to be called

D. Architectural

1. John Uhl reported:

a) Dr. Isaiah Davis on West Springs wants to put up a six foot wood fence to obscure traffic. Dr. Davis objected to putting the "good side" of the fence towards the neighbors. Dr. Davis' neighbor does not object to the fence. John Uhl does not believe the fence has a good side or bad side. Motion by made by John Uhl to approve the exception (good side of fence facing the homeowner); the motion was seconded by Steve Holtschlag to approve the exception. The motion passed unanimously.

b) New request for a six foot fence at 718 Kinlock. John Uhl recommends it. Home owner obtained approval from the neighbors. The good side will face the neighbors. It does not go past the set back of the house.

c) Carolyn Nelson: Carl Voges told her that she had to follow the existing fence line. Ms. Nelson did not agree with that proposal. Ms. Nelson stated to him that she requested an exception but no one has received anything in writing.

(1) The board agreed that the fence cannot exceed the set off from the front of the house. Motion made by Harry Goldberg to approve the six foot fence as drawn by the homeowner as long as no part of the

fence is forward of the front corner of the house (not to include the porch); motion seconded by Steve Holtschlag; the motion passed unanimously.

(2) John Uhl and Carl Voges will meet with the homeowner to discuss the Board's decision

E. SVCC representative

1. No one attended. However, the board took up the issue of the SVCC's signs advertising the summer pool membership. These are the same signs that have been approved in the past. A motion was made by Harry Goldberg to approve the signs; the motion was seconded by Steve Holtschlag and it passed unanimously. See new business below for additional information.

F. Grounds Committee/Keep Spring Valley Beautiful

1. Steve Holtschlag provided a written report which is incorporated herein by reference. He highlighted that planting has begun on West Springs and South Springs entrance. His report detailed that junipers were removed at the exit side of the South Springs exit to increase visibility; they will be replaced with Aspidistra. Lights were installed in the Honor Garden.
2. He has been clearing land around the entrance and entrance lake

G. Special Projects

1. Harry Goldberg - see below

V. Manager's Report

A. Carl Voges provided a written report which is incorporated herein by reference. He highlighted the following:

1. 440 Valley Springs: project will begin in the next couple of weeks
2. 4 Tiftgreen: dead trees will be removed. The house is occupied
3. 121 Brook Valley: homeowner wanted Mr. Voges to comment on "lousy" contractors in the newsletter. All agreed that such a comment would not be prudent.
4. Richland County zoning hearing regarding property on North Springs
   a) Currently, the North Springs side of the property is a buffer.

b) Business owner would have to use Woodley Way to access property

5. No action has been taken on the yards of foreclosed property
6. He is going to get estimates next week for the Honor Garden requested by Harry Gregory. Carl Voges expects to have the estimates in hand by the March board meeting.

VI. Administrator's Report

A. Beth Swindler reported that:

1. Very little activity on the delinquency reports
2. 34 bar codes have been deactivated (eight families). The homeowners were notified that their bar codes were deactivated
   a) the next step is to file with the magistrate
3. #35 under judgments: the property was foreclosed, not notified, contacted mortgage company in Greenville, not getting any response from the mortgage company; will send the bill to the mortgage company
   a) there is a judgment on file; the lawyer that did the foreclosure didn't notify us
4. Bad debt of $3185.54 has been written off
5. Beth presented a summary of how to file a judgment against a delinquent homeowner which is incorporated herein by reference
   a) Beth has a process server she uses if the Sheriff can't find the delinquent homeowner
6. #11 is in loan modification
7. Bank draft program: She wants to encourage residents to sign up. Wants to give residents an incentive to sign up. She requested permission to offer a gift card or waiving one quarter assessment (drawing) for one resident
   a) Motion made by Paul Spencer to offer waiving one resident's assessment for one quarter, the promotion will be run for 2 quarters up to maximum value of $177.00 each; the motion was seconded by Steve Holtschlag; the motion passed unanimously

VII. Old Business

A. Southlake Road Conservation Easement

1. Tabled until a later meeting

B. 118 Spring Valley Road "For Sale" Sign

1. Harry Goldberg informed the board that the homeowner would not voluntarily pay a fine without the approval of the board to put up another "For Sale" sign. Mr. Goldberg recommends that the board hire an attorney to handle enforcing the fine.
2. Motion made by Paul Spencer to hire the Finkle law firm to handle the case against Coley Brown, second by Renee Gardner; the motion passed unanimously.

VIII. New Business

A. Park Shore Park.

1. President Spivey reported that he and Steve Holtschlag attended two meetings of the Park Shore Board. Steve Holtschlag stated that the residents want to put in a playground and picnic shelters. The Park Shore Board wants to work with the HOA to set up the park. The SVHOA would require that the park would be open to all Spring Valley residents. The SVHOA owns the land where the park would be built.

B. Pool Membership

1. Matthew Flemming, SVCC representative, requested permission to post signs around the neighborhood advertising the summer pool membership. These signs have been approved by board previously. An electronic vote was taken; no one objected. The following board members voted electronically to allow the posting of the signs: Matthew Flemming, Marc Fogarty, Harry Goldberg, Steve Holtschlag, George Johnson, Hunter Limbaugh, Rodney Spivey and Paul Spencer.

IX. Adjourn

A. Motion was made by Steve at 8:58 to adjourn the meeting. The motion was seconded by Renee and passed unanimously.

EXHIBIT 8

to Affidavit of Beth Swindler

Spring Valley Homeowners Association
Board of Directors Meeting
Spring Valley Country Club
May 24, 2012
6:30pm

Rodney Spivey called a meeting of the Spring Valley Homeowners Association to order at 6:30 p.m. Board members present were Paul Spencer, Steve Holtschlag, Renee Gardner, Harry Goldberg, John Uhl, and Hunter Limbaugh. Also in attendance were Beth Swindler, Carl Voges and the visitors listed below.

I. **Call to Order and Introduction of Visitors**

A. Rodney Spivey called the meeting to order. He recognized: Bill Cantwell (Valley Springs) and Tom Cross (Southlake Road).

II. **Approval of the April 26, 2012 Minutes**

A. Rodney Spivey asked for any additions or corrections to the April 26, 2012, minutes. Steve Holtschlag clarified that the "fence" on Southlake Road is 4x4 posts with wire to prevent driving on the planted area. A motion was made by Harry Goldberg to approve the minutes as amended. The motion was seconded by John Uhl. The motion passed unanimously.

III. **Treasurer's Report**

A. Marc Fogarty was not present. A written report was provided which is incorporated herein by reference. Beth Swindler highlighted the following:

1. Total reserves: $505,683.69
2. Total cash on hand: $895,378.24
3. The total cash on hand does not reflect the recent road paving payment of $173,000.
4. Total Delinquency as of April 19, 2012: 85 (totaling $94,504.35)
5. Total Delinquency as of May 16, 2012: 66 (totaling $84,918.52)

B. Budget

1. Board members should review their current budget and commit funds by July 31, 2012.
2. 2012-2013 budget requests should be submitted to the Treasurer by the July 26, 2012 meeting for a budget draft review in August. The final budget will be approved September 27, 2012.

IV. Committee Reports

A. Lakes (Hunter Limbaugh)

1. Hunter reported there was one request for a non-lake resident to gain access to a lake. He was advised to secure permission from a lake resident.

B. Roads and Drainage (Renee Gardner)

1. Renee provided a written report which is incorporated herein by reference. In her oral report she noted the following:
   a) Roads: Renee has meet with Robert Dickinson, our consultant, in preparation for budgeting the resurfacing of Entrance Circle in 2013. She proposed the current normal crown pavement elevation be replaced with super elevated cross section paving to facilitate 1) proper drainage to prevent future cracking and pavement damage; and 2) encourage reduced speeds by motorists. Motion made by Renee Gardner to change the existing normal crown elevation pavement to super elevated cross section paving and replace the current damaged ogee curb gutter with new ogee curbing beginning at the main entrance island and ending at Spring Valley Court. Second by Steve Holtschlag. Approved unanimously.
   b) Drainage: there are two invoices approved for payment being submitted now. The creek between Olde Springs and Brookspring is scheduled to be done soon.
   c) Lane markings: Steve Holtschlag requested Paul and Renee to have Sizemore officers and the road consultant conduct a study of the

benefits of line markings on some of the narrower roads with elevated curves, such as Southlake. The markings on Olde Springs that created a pedestrian walk area have been quite successful.

d) Ed Watson from Richland County School District Two has inspected the Kinlock Road outfall ditch from their property access. He requested and will be granted permission to access the ditch from the adjacent Spring Valley properties to resolve those residents' issues with the ditch.

e) Scott Robidoux has graciously accepted the Association's request to prepare an engineering report for the drainage problems on Glenlake Road for a fee of $500. The report should be ready nextmonth.

f) The road paving and pavement markings are complete. We have not received the final invoice.

C. Security and Gates (Paul Spencer)

1. Paul Spencer provided a written report which is incorporated herein by reference. He added there was a ticket issued for failure to stop for blue lights. Richland County was called for persons entering the main entrance after hours with the smell of marijuana coming from the vehicle.

D. Architectural (John Uhl)

a) John Uhl reported that he received a request from the homeowner at 240 Valley Springs Road to replace an existing 4-foot chain link fence with a 6-foot privacy fence. Approval granted.

b) Rodney asked Carl to confirm the fence material used on the common area by 324 and 328 West Springs is consistent with the architectural approval.

E. SVCC Representative (Matthew Flemming)

1. Not present.

F. Grounds Committee/Keep Spring Valley Beautiful (Steve Holtschlag)

1. Steve Holtschlag provided a written report which is incorporated herein by reference.

2. Steve requested Carl provide historical pine straw costs for his budgeting purposes.
3. Pine straw was added on Northlake Road to cover the milling placed there after paving. The area by Lonnie B. Nelson School should also have straw added and the costs provided Steve.
4. The cost of Bent Ridge is $360 and the water tap-in is $2,100.
5. The cost of the circle is $600 with additional undetermined costs of valves.
6. Steve plans to plant 150-200 hydrangeas this winter in the entrance circle and top of the hill. These plants are disease-resistant and flower for 3-4 weeks at a time.

G. Special Projects (Harry Goldberg)

1. Harry Goldberg did not have a report.

H. Rodney noted that the by-law committee will meet.

J. Rodney asked the board to begin thinking about the nominating committee.

V. **Manager's report**

A. Carl Voges provided a written report which is incorporated herein by reference. He highlighted the following:

1. Additional issues

a) West Springs Utility Fencing: Description incorporated by reference. Motion made by Paul Spencer to grant exception allowing homeowner to fund an upgrade in fencing material on the mutual property line to match his current material. Second by John Uhl. Motion approved unanimously.

b) Fencing: The survey of the Harrington property line will be a fencing budget item.

c) 140 Park Shore East: Paul asked if this property is on the market. Neither manager has been informed. It will be checked.

d) Steve received a call that people are cutting blooms from the Park Shore East Rose Garden. He requested a sign be posted instructing people to refrain from cutting roses.

e) 309 Park Shore East: Rodney reported a complaint was received about a company vehicle parked in the driveway. Discussion ensued regarding commercial vehicles, the deed restrictions and the rules and regulations. The resident will be notified that the commercial vehicle must be parked in the garage at all times. If it is noted parked elsewhere on the property, it will be subject to the rules and regulations violations and fine structure.

f) 405 Park Lake Road complaints will be addressed at the June meeting.

VI. **Administrator's report**

A. Beth Swindler provided a written report which is incorporated herein by reference.

1. The pending magistrate case was paid prior to court.
2. New cases will be filed with the magistrate.
3. Paul Spencer inquired about #52 in the "Other" category. There is an unpaid fine, assessments are current.
4. Steve Holtschlag inquired about #16, the house that appears abandoned with no foreclosure on file. Beth gave the mortgage information to Harry Goldberg. It is not a company with which he works. Carl received a phone call from Rogers, Townsend & Thomas that the property is going into foreclosure. Once it is filed and we are served, we will have a point of contact to address the safety and security issues this property presents.
5. Rodney inquired about #50 which is rumored to have been purchased. The prospective buyer has spoken with Carl and plans to speak with John Uhl regarding architectural requests. Carl will provide Beth with a contact.

VII. **Old Business**

A. Southlake Road Conservation Easement

1. Rodney Spivey has talked more with Cooper/Pine Springs. Pine Springs will prepare a "Letter of Intent" for review by the board.

B. 118 Spring Valley Road "For Sale" Sign

1. Harry Goldberg reported changes in filing the lawsuit. His attorney contacted Beth to secure a copy of the master deed. Their discussion led to the conclusion it is best that the original deed for that property be retrieved from the courthouse. A lien would then be filed as provided by the deed. When the house is sold, the lien would need to be paid or a lawsuit brought by the homeowner to have the lien removed.

C. Park Shore Lake Park

1. Rodney and Steve have been approached by members of both the Park Shore Lake Association and Park Block Association to collaborate in improving the park which has become unsightly. In return, the park would be open to all Spring Valley residents. The SVHA owns the land and pays the taxes. George pulled the original deeds at Rodney's request. Motion by Steve Holtschlag to engage a real estate attorney to determine their interpretation of the deeds on Park Shore Park. Second by Paul Spencer. Motion passed unanimously. Rodney will provide Harry with some attorneys from which to choose.

VIII. New Business

A. Committee Notebooks

1. In an effort to retain historical perspective and provide a basis for future board members, current board members are asked to write a brief job description for their committee, the projects that have been completed, and goals. A tab title sheet is included. Board members should return completed tab title sheets by the August meeting for printing by Beth.

B. Realtor Focus Group

1. Rodney, Paul and Steve met with a group of realtors to discuss ways to promote Spring Valley to potential buyers. Some resulting ideas are:
   a) Produce periodic email blasts for realtors.
   b) Promote realtor information regarding club summer swim membership.
   c) Promote security services.
   d) Host a luncheon for brokers-in-charge.
   e) Consider electronic scan tags for online queries of available properties.

f) Encourage current residents to invite friends and family to buy in SV.

g) Billboard advertising "change" in SV.

h) Produce a flyer/brochure of features and benefits as an insert to local magazines/periodicals.

Motion made by Steve to create an ad hoc committee to promote the neighborhood. No second. Item tabled until next meeting.

IX. **Executive Session**

A. Motion to go into executive session at 7:52 by Steve and seconded by John.

X. **Adjourn**

A. The committee returned to regular session. Motion made by John to adjourn. The motion was seconded by Harry. The meeting adjourned at 8:12 PM.

Respectfully submitted,

Beth Swindler
Acting Secretary

Spring Valley Homeowners Association
Board of Directors Meeting
Spring Valley Country Club
June 28, 2012
6:30pm

Rodney Spivey called a meeting of the Spring Valley Homeowners Association to order at 6:30 p.m. Board members present were Paul Spencer, Renee Gardner, Harry Goldberg, John Uhl, George Johnson and Marc Fogarty. Also in attendance were Beth Swindler, Carl Voges, and the visitors listed below.

I. Call to Order and Introduction of Visitors

A. Rodney Spivey called the meeting to order. He recognized: Paul Johnson (Park Shore Drive East), Bill Tefs (East Branch), and Joe Burns (Park Shore Drive East).

B. Rodney Spivey recognized Jerry Vaughn (Park Lake Road).

1. Mr. Vaughn came to speak to the Board about 405 Park Lake Road

a) Condition of the back yard is deplorable

b) The owner has promised to come back to address the yard but he has not

c) The pool water is brown

(1) Darlene LNU also addressed the board. Someone from the County came out to inspect and spray the pool. She has not seen anyone from the County come back. The employee stated that the mosquitoes are a health-hazard. Mr. Goldberg recommended to Darlene LNU that she follow up with the County to try to get the County to declare it a public nuisance.

d) The house hasn't been occupied since 2006

e) Three months ago, someone started coming once a month to clean up the front yard

f) The gate in the back of the house is missing

g) Neighbors want the Board to fine the owner of 405 Park Lake Road

h) Mr. Vaughn noted that this house is different from the majority of houses in the neighborhood because it is on a lake

i) President Spivey pointed out that Carl Voges worked with the homeowner to get the front yard in better shape. He visited the house today and noted the overgrown backyard and the dirty pool. The Board is not allowed to determine what is "in good taste." The board has never addressed the condition of backyards. The board has levied fines against the homeowner (#52 on the Manager's report). President Spivey stated that the Board would work with the neighbors of 405 Park Lake Road to address their concerns.

(1) Marc Fogarty noted that the by-laws committee will discuss the issue of backyards at its next meeting

II. **Approval of the April 26, 2012 Minutes**

A. Rodney Spivey asked for any additions or corrections to the May 24, 2012, minutes. President Spivey noted that on Page 3, 4(b)(1) "curb" should be changed to "curves" and also "e" should be changed to "ready next month."

B. A motion was made by John Uhl to approve the minutes as amended. The motion was seconded by Paul Spencer. The motion passed unanimously.

III. **Treasurer's Report**

A. Marc Fogarty presented a written report which is incorporated herein by reference. He highlighted the following:

1. Total reserves: $505,797.41
2. Total cash on hand: $743,297.50
3. Total Delinquency as of May 16, 2012: 66 (totaling $84,918.52)
4. Total Delinquency as of 6/20, 2012: 56 (totaling $79,771.13)
5. On the income expense statement, line item for utilities is higher because of the sprinkler system. Also, 9020 grounds maintenance is $2000 over because of summer planting but it should work out over time.

IV. **Committee Reports**

A. <u>Lakes (Hunter Limbaugh)</u>

Record on Appeal 400

1. Hunter was not present.

B. Roads and Drainage (Renee Gardner)

1. Renee provided a written report which is incorporated herein by reference. In her oral report she noted the following:
2. She stated that she would not use her whole budget this year but asked that it be placed in reserve for entrance circle next year. The board could carry it over to next year's budget.
3. Roads: She has wrapped up the paving contract. The consultant is working on the budget for next year.
4. Drainage: Cameras have been run. Scott Robideaux has not submitted his report yet; there was a miscommunication that caused the delay.

C. Security and Gates (Paul Spencer)

1. Paul Spencer provided a written report which is incorporated herein by reference.

a) He noted that he is over budget because of the timing of Sizemore's bills.

b)There was a problem at 304 North Lake; the resident believes someone is periodically in her house.

c)There was a hit and run. An elderly lady hit someone outside of the neighborhood but was found in the neighborhood passed out.

d)There was a dog attack by a pit bull; the pit bull is no longer in the neighborhood.

e)An adult living with a homeowner caused a disturbance and had to be arrested.

f)There was a teenage party that got out of control.

g) There was a break-in with no damage.

D. Architectural (John Uhl)

a) John Uhl reported that there were no requests this month for approval.

b) President Spivey noted that the homeowner on Valley Springs and Bee Ridge still has the bad side of her fence exposed. The side that is exposed faces the bridge.

E. SVCC Representative (Matthew Flemming)

1. Not present.

F. Grounds Committee/Keep Spring Valley Beautiful (Steve Holtschlag)

1. Steve Holtschlag was not present but he provided a written report which is incorporated herein by reference.
2. He sent an email requesting that the Board discuss the new sprinklers and pinestraw. Carl Voges will be working with Rick tomorrow to address it. Renee Gardner suggested that Carl coordinate with Robert (the consultant) to ensure that the resurfacing doesn't break the sprinklers.

G. Special Projects (Harry Goldberg)

1. Harry Goldberg did not have a report.

V. **Manager's report**

A. Carl Voges provided a written report which is incorporated herein by reference. He highlighted the following:

1. He had to contact a number of residents that were not taking care of their yards
2. 2216 Bee Ridge: sent the attorney for the homeowner a letter last week regarding painting the exterior
3. 146 BrookSpring: owner is out of state, renters left. Homeowner has started cleaning it up (according to John Uhl).
4. 309 Park Shore Drive East: the owner was present at the meeting and stated that he is keeping his work truck in the garage
5. 704 Kinlock: President Spivey asked for an update on getting the homeowner to stop parking on the lawn. Carl Voges said he is trying to find the owner. President Spivey asked Carl to address the homeowners that are parking in the grass on his report
6. 4 Tiftgreen: Carl stated that he has tried to get in contact with the person in charge but he has been unable to. The son-in-law made promises about keeping up the house but he has not followed through.
7. Infrastructure
    a) 523: He contacted the property owner on Flora Drive about the clear cutting: he was informed that the homeowner sold the timber. The

homeowner is going to clean up the land and then replant. Carl is going to speak to the homeowners whose homes back up to the clear cut yard about fencing.

b) Advertising supplement that the State Newspaper is throwing into yards violates our bylaws. Carl was directed to inform the State Newspaper to stop.

8. Addendum to written report (incorporated herein by reference)

a) Unfinished stucco wall at 20 Park Shorn North

(1) The letter sent by the SVHA architectural chairman to the seller, dated November 4, 2005, was not recorded.

(2) The seller of the home is no longer in business

(3) Homeowner says that he was not told about the problem when he purchased the home

(4) Homeowner wants the SVHOA to split the cost of finishing the stucco. Total price is $7500.00.

(5) When the purchaser bought the house, the bylaws did not require the homeowner to finish the stucco wall

(6) Motion made by Marc Fogarty that we split the cost with the homeowner up to a maximum of $3,750.00; the motion was seconded by John Ulil. The motion carried unanimously.

b) Russ Templeton has completed Matter of Record for new fence installation at 300 West Springs

c) The resident at 145 Pond Ridge has requested the association install a barbed wire fence next to his existing fence. According to Carl Voges, it would be a difficult installation. This has not been an area were there has been trespassing.

(1) The issue was tabled so that Carl could get photos of the existing fence to show the board.

d) New DVR/AC installation at Old Springs Guard House

(1) Before the contractor's arrival, the guard house was vandalized

VI. Administrator's report

A. Beth Swindler provided a written report which is incorporated herein by reference. She highlighted the following

1. Not a lot of activity on collections: 10 cases cleared;
2. There have been a lot of payments coming in;
3. She is working with a private server to handle service of magistrate summons;
4. Line 52: Paul Spencer asked if the homeowner was paying. Beth stated that he is paying his assessments but not the fines.
    a) Beth asked whether the Board should go ahead and file liens against delinquent homeowners versus going through the magistrate's office. It was the consensus of the board that Beth should investigate pursuing liens against delinquent homeowners. Motion made by Paul Spencer that the Board attach a lien to property #52; the motion was seconded by John Uhl. The motion passed unanimously.
5. #50 is scheduled to be purchased at the end of July;
6. She reminded the board that there will be another drawing in July for homeowners who sign up for automatic withdrawal;
7. President Spivey noted that we are ahead on collections this year.

VII. Old Business

A. Southlake Road Conservation Easement

1. President Spivey: county attorneys are drafting the easement paperwork for the board to review. A special meeting will be held on September 13, 6:30.

B. 118 Spring Valley Road "For Sale" Sign

1. Harry Goldberg reported that we are attaching a lien to the property; it should be filed in the next week or so. He advised the board that a homeowner can counterclaim for slander of title when the Board places a lien on a homeowner's property.

C. Park Shore Lake Park

1. President Spivey reported that he is trying to obtain an attorney to consult regarding the Park issues

VIII. New Business

A. Nominating Committee Update

Record on Appeal 404

1. Marc Fogarty has given the paperwork for Beth to place in the newsletter for homeowners interested in serving on the Board. He plans to report back to the Board in August. There are three vacancies.

B. 2012-2013 Budget

1. Marc Fogarty handed out a Budget Request Form. He asked that they be returned by the July meeting. Beth can provide committee chairs with historical information.

C. Bylaws committee: will meet next Thursday

I. Executive Session

A. Motion to go into executive session at 8:20 by Marc Fogarty and seconded by John Uhl. The motion passed unanimously.

X. Adjourn

A. The committee returned to regular session at 8:38 pm. Motion made by Harry Goldberg to accept the decisions made in executive session; the motion was seconded by John Uhl. The motion passed unanimously.

B. A motion was made by John Uhl to adjourn. The motion was seconded by Harry Goldberg. The meeting adjourned at 8:40 PM.

Respectfully submitted by George Johnson.

SPRING VALLEY HOMEOWNERS ASSOCIATION
BOARD OF DIRECTORS MEETING
SPRING VALLEY COUNTRY CLUB
August 23, 2012
6:30PM

President Rodney Spivey called a meeting of the Spring Valley Homeowners Association to order at 6:31 p.m. Board members present were Steve Holtschlag, Marc Fogarty, Renee Gardner, John Uhl and Matthew Flemming.

1. Call to Order and Introduction of Visitors
    a. President Spivey recognized attorney John Blackmon and residents Robert & Casey Link of 144 Valley Springs Road, Tom Cross of 701 Southlake Road, and Ted McDowell of 305 Valley Springs Road.
2. Motion to amend the agenda made by Steve Holtschlag to change the "Manager's Report" to "Manager Vote". Second by John Uhl. Motion approved. Motion to move the "Security Report" to follow Mr. Blackmon's address by John Uhl. Second by Steve Holtschlag. Motion approved.
3. Mr. Blackmon is a consultant for Prez Chemical and Chris Robnett, DDS both of whom have offices located on N. Brickyard Road at N. Springs Road. Mr. Blackmon sent a letter to the Association requesting permission for an easement to tie-in to the existing sanitary sewer lines in Spring Valley. He has also provided a letter from Palmetto Richland, who will be the new sewer company for the area north of Brickyard Road. Currently it is held by the City of Columbia. Mr. Blackmon presented that the properties are in a low-lying area that does not have city sewer service. The properties will have a re-zoning hearing attempting to change from Heavy Industrial to General Commercial. He proposed boring under the roads to tie-in at South Springs Road, pending an engineering study. The other option would be going through Brickyard Road to Kinlock Court. It will be discussed in the drainage report of the meeting.
4. Security Report
    a. Paul Spencer was not present. A written report is incorporated herein by reference.
    b. Rodney Spivey reported there have been reports of animal cruelty to cats that have been turned over to the Richland County Sheriff's Department. A lead investigator has been assigned who is working closely with Sizemore Security and Animal Control. This will be treated as a felony. All questions need to go through the Sheriff's Department from this point forward. All reports received have been in the Park Shore Lake area. An email blast was sent to registered homeowners and an announcement on the web site. Sizemore has increased patrols in the area and the Sheriff's Department is patrolling. Any information should be directed to the Sheriff's Department.
    c. Paul Spencer will be reviewing the low patrol vehicle mileage reported.
5. Approval of the July 26, 2012, Minutes

a. President Spivey asked for any additions or corrections to the July 26, 2012 minutes. Motion was made by John Uhl to approve the minutes. Steve Holtschlag seconded the motion. The motion passed unanimously.
b. The November, 2011 annual minutes were reviewed by the board prior to inclusion in the October mailing.

6. Treasurer's Reports
   a. Marc Fogarty presented a written report which is incorporated herein by reference. He highlighted the following:
      i. Total Reserves: $506,001.27
      ii. Total cash on hand: $767,341.94
      iii. Total Delinquency as of July 19, 2012: 96 ($102,258.72).
      iv. Total Delinquency as of August 14, 2012: 69 (90,437.77).
7. Committee Reports
   a. Lakes
      i. Hunter Limbaugh was not present. No report.
   b. Roads and Drainage:
      i. Roads: Renee Gardner reported no developments on roads.
      ii. Drainage:
         1. The drying we have awaited of the overbanks in the channel between Old Springs Road and Brookspring Road has not occurred. The contractor will begin work September 4. It will probably be slightly more expensive than anticipated due to the sogginess.
         2. Palmetto Industrial will return to clean pipes on Brookspring and Olde Springs and the box on Eastbourne with alcoholic beverage containers in it.
         3. Renee has prepared graphs of the drainage work done from 2008-2012 for display at the Annual Meeting. Discussion ensured regarding video work, pipe cleanouts and repairs. The video reports specify findings to the consultant who is able to identify the action needed. The most expensive repairs involve root invasion.
         4. A draft review of the Glenlake Road drainage problem has been received from Scott Robidoux and returned to him with comments for the final report.
         5. Discussion of the Prez Chemical and Dr. Robnett proposal to tie-in to the sewer line ensured. Without the engineering studies to evaluate the elevations and flows, the matter must be tabled. Renee will communicate with Mr. Blackmon.
   c. Architectural
      i. John Uhl was present. He had two requests this month:
         1. 316 Valley Springs—The homeowner is replacing a 4-ft chain link fence with a 6-ft wooden fence.
         2. 813 Kinlock—A letter has been sent to the homeowner who did not seek approval before erecting a shed on the property.
   d. SVCC Representative

i. Matthew Flemming was present. Discussion of the maintenance agreement of the fountain was held. Further discussion to continue in the Grounds/Keep Spring Valley Beautiful report to follow.

e. Grounds Committee/Keep Spring Valley Beautiful
   i. Steve Holtschlag reported that Carl had previously discussed replacing the grass surrounding the fountain with zoysia at an estimated cost of $1200-$1500, which would be paid from the KSVB budget line. Steve recommends that Grassmasters continues to maintain the grass and will oversee the project.

f. Special Projects
   i. Harry Goldberg was not present.

8. Manager Vote
   a. After deliberation in executive session, a motion to approve Howard Miller as the general manager was made by Marc Fogarty. Second by John Uhl. Motion approved. Effective date of contract will be September 4, 2012.

9. Administrator's Report
   a. Beth Swindler provided a written report which is incorporated herein by reference.
      i. Matthew Flemming requested clarification of the "Other" category. These are residents with fines or partially paid accounts below the delinquency threshold.
      ii. Follow up responses from the previous month:
         1. The allowance for uncollectible accounts is determined during the audit/compilation as a balance sheet item based on doubtful accounts at the end of the fiscal year. It is not based on percentages.
         2. The bad debt expense is the based on the accounts that have gone into foreclosure and sold. No further collections can be made. In January, 2012, the board voted to write off four properties for a total of $3,185.00 for 2011; in 2011 the board wrote off three properties for $4,759.00; in 2010 the board wrote off eight properties for $6,306.00.
      iii. The zoning hearing for the properties on N. Brickyard Road and N. Springs Road will be held September 6, 2012 at 1:00pm. The board requests the new general manager attend that meeting.
      iv. The timeline for annual meeting preparation is incorporated by reference. Committee reports are due by the end of October, 2012.
      v. Newsletter articles are due September 14, 2012.
      vi. Four new people signed up for bank draft.

10. Old Business
   a. Southlake Road Conservation Easement
      i. President Spivey provided a copy of the Grant of Conservation Easement with changes made from the last meeting.
      ii. Issue #1: the property could become Spring Valley's by December 31, 2012 or sooner once approved by the homeowners and ability of attorneys to close.

iii. Rodney Spivey provided a map of the area that would be included in wetlands. Enlarged maps will be available for view at the September 13, 2012 meeting.
iv. Issue #1: Nancy Stone-Column of Richland County agreed that footbridges and paths would be allowed with County approval in wetland areas.
v. Issue #2: the easement will allow the setting of beaver traps.
vi. Issue #3: we can place fences on the Two Notch Road side of the property.
vii. Tax Consequences: Tax consequences prior to entering a conservation easement were $210.00 annually.
viii. Paths will be allowed less than 100 feet from, roads will not be. Roads must be non-porous.
ix. Ditch liability: The director of the department will assume maintenance of the ditch parallel to the property and Two Notch Road. Paul Spencer requested the board via email to have an attorney who specializes in real estate to review the contract to limit the Association's potential liability. The County states it intends to renovate the entire Little Jackson Creek stream and remove the silt in Entrance Lake. The work has not been scheduled. Rodney will follow up with the County for updates on their plans to address the erosion problems. Mr. Quinton Epps of Storm Water Management will be leading the project at 576-2465.
x. Issue #8: Only Spring Valley residents and guests will have access to the property.
xi. Lewis Lang was recommended as an attorney for land transactions, deeds and titles. Motion by John Uhl to retain Mr. Lang to review the conservation easement. Second by Steve Holtschlag. Motion approved. Rodney Spivey will seek his letter of opinion.

b. 118 Spring Valley Road "For Sale" Sign
   i. Harry Goldberg was not present. Rodney Spivey reported that he has signed a lien for the amount of the fine with a request for consideration to Harry Goldberg for the fees related to the filing of the lien.

c. Nominating Committee Update
   i. Marc Fogarty reported that the committee will meet next week and have recommendations for nominees for the board at the September meeting including biographical information prepared for the October mailing.

d. 2012-2013 Budget
   i. A working session was held August 16, 2012. The resulting budget proposal is incorporated by reference.
      A. The total income will be reduced by $325.00 from the interest income line to $769,400.00.

B. Office supplies will be increased by $1,000.00 to print an additional 250 Information Guides so that all homeowners will be aware of deed restrictions, by-laws and rules and regulations.
C. Bad debt expense will be increased to $12,200 for actual bad debt expense.
D. Marketing expense has been added to the budget based on meetings with the real estate focus group. Steve Holtschlag, Marc Fogarty, Rodney Spivey and the general manager will work with realtors to market and promote the neighborhood.
E. Adjustments were made to the computer services, software, seminar and training lines based on actuals and anticipated training.
F. Utilities will be increased due by $1,500.00 for irrigation from proposed budget.
G. Beautification will be reduced by the same $1,500 amount.
H. Roads will be increased by $65,040.00 to $262,400.00 to address the Entrance Circle issues based on the engineering study previously provided to correct the drainage that cause the cracking and annual repairs. Copies of the engineering study are available. The engineers will be on-site to ensure the implementation of the recommendations.
I. The storm drains will be reduced to $20,000 based on the consultant's report and actual expenses.
J. Fencing will be reduced from $50,000 to $30,000 based on actuals.
K. Security will be increased from $260,000.00 to $266,100.00 based on gas prices.
L. The capital investment for the Entrance Lake/Southlake Road tract has been incorporated into the budget at $50,000.00.
M. Given the aforementioned budget changes, the 2012 Total Expenses of $775,045.00 will be increased in 2013 to $864,695.00.
N. The 2013 budget deficit of $95,295.00 will be funded by current cash accounts.
O. Steve Holtschlag offered the comment that we are experiencing the worst economic cycle that many of us have ever seen and continue to face uncertainty. It is amazing that Spring Valley is able to continue collecting and fully funding expenses.
P. Marc Fogarty made a motion to approve the proposed budget as presented. Second by John Uhl. Approved unanimously.

11. New Business
    a. Sheds
        i. Rodney Spivey cited references in the deed restrictions and rules and regulations that prohibit sheds in Spring Valley and require

architectural approval of all outbuildings (2012 Information Guide, P3, sections b and h and P22, section d).

ii. A shed has been constructed at the end of the driveway at a property on Kinlock Court. The homeowner was verbally notified of the violation and with subsequent written notification. The homeowner identified existing sheds in Spring Valley.

iii. The board will work with the incoming general manager to identify the location of all sheds.

iv. The board will seek legal advice from counsel whose area of expertise is in homeowner association matters. Beth Swindler will bring a list of names and qualifications to the next board meeting.

v. The residents will be reminded of the deed restrictions and by-laws in the next newsletter. Those in need of a copy of the Information Guide will be directed to Beth Swindler.

12. Adjourn

a. Marc Fogarty made a motion to adjourn. Renee Gardner seconded the motion. Meeting adjourned at 8:25pm.

SPRING VALLEY HOMEOWNERS ASSOCIATION
BOARD OF DIRECTORS MEETING
SPRING VALLEY COUNTRY CLUB
September 27, 2012
6:30pm

President Spivey called a meeting of the Spring Valley Homeowners Association to order at 6:30 pm. Board Members present were Steve Holtschlag, Marc Fogarty, Paul Spencer, Renee Gardner, John Uhl, Harry Goldberg, and George Johnson. Also in attendance were Administrator Beth Swindler, Manager Howard Miller and the homeowners listed below.

1. **Call to Order and Introduction of Visitors**
   a. President Spivey recognized homeowners Tom Cross of 701 Southlake Road and Bill Barnett of 209 Park Shore West.
2. **Approval of the August 23, 2012 Minutes**
   a. President Spivey asked if there were proposed additions or amendments to the minutes of the August 23, 2012, Board of Director's Meeting. Steve Holtschlag noted that John Uhl made the motion to approve the minutes from the last meeting and he seconded the motion. President Spivey requested a motion to approve the minutes. (Motion: S. Holtschlag; Second J. Uhl; Motion carried.)
   b. President Spivey requested a motion to amend the agenda to add an issue of new business. (Motion: S. Holtschlag; Second J. Uhl; Motion carried)
3. **Treasurer's Report**
   a. Marc Fogarty presented a written report which is incorporated herein by reference. He highlighted the following:
      i. Total Reserves: $506,099.52
      ii. Total Cash on Hand: $815,919.52
      iii. Total Delinquency as of August 14, 2012: $90,437.77
      iv. Total Delinquency as of September 19, 2012: $80,903.26
   b. It is time for our audit. Marc recommended that we use the same company to prepare the audit. (Motion: J. Uhl; Second: P. Spencer; Motion carried)
   c. Steve asked whether we will come in under budget at the end of the year. Beth Swindler stated that we should be under budget because fencing and roads were less than projected.
4. **Committee Reports**
   a. <u>Lakes</u>
      i. Hunter Limbaugh was not present. He did not submit a written report.
   b. <u>Roads</u>
      i. Renee Gardner presented a writing report which is incorporated herein by reference she highlighted the following:
         1. Roads
            a. Renee met with the Consultant and homeowner Gary Matthews (Olde Springs Road) on August 30, 2012. Mr. Matthews is an engineer with experience in road construction; he used to work for the Mungo Company. As

a result of that meeting the following actions will or have been taken:

i. 16 trees were removed from entrance circle. The cost is $1500.00. The money will come from the 2012 budget

ii. Gary will have someone provide an opinion as to whether cement stabilization is a viable option

iii. F&ME will make 6 pavement corings to determine the pavement thickness. This information is needed to protect the culvers. The cost ($1200.00) will come from the 2012 budget.

b. The resident at 2103 Bee Ridge called about cracks in Bee Ridge Road. Renee informed him that Bee Ridge is on the priority list for 2014. Renee also asked the consultant to look at Bee Ridge Road for patching.

c. A representative of the homeowner at 2101 Riding Ridge Road reported a large sinkhole in/near the property. Upon investigating, Renee determined that there is a sinkhole but it is not encroaching on the road.

d. No construction work was performed since the last homeowner's meeting.

2. Drainage:

a. The resident at 136 Southlake called to complain about the low lake level for Lower Spring Valley Lake. She is being provided the contact information for James B. Hawthorne to schedule an inspection.

b. Renee followed up with Ed Watson, Design and Construction Supervisor for Richland District Two Schools. He told her that he would coordinate an investigation of sediment buildup in the outfall ditch but she has not heard back from him.

c. Palmetto Industrial cleaned more pipes identified by the SCA camera work.

d. The channel between Olde Springs Road and Brooksprings Road is being cleaned. Wet soil was removed from the channel and placed behind a temporary silt fence.

c. <u>Security and Gates</u>

i. Paul Spencer presented a writing report which is incorporated herein by reference he highlighted the following:

1. He had several meeting with Sizemore regarding the Officer Crosby issue. He met with a corporate representative. The corporate representative told him that the officers were getting additional training. It is clear that procedures were not followed and the officers need better supervision. Prior to the Crosby issue, Paul had complained to Sizemore about the conduct of some of the officers.

d. Architectural
    i. John Uhl was present. No requests this month.
e. SVCC Representative
    i. Matthew Flemming was not present.
f. Grounds Committee/Keep Spring Valley Beautiful
    i. Steve Holtschlag presented a written report which is incorporated herein by reference. He noted that there will be significant planting over the next couple of months.
g. Special Projects
    i. Harry Goldberg was present. He informed the board that the lien against the homeowner on Spring Valley Road with the "for sale" signs had been filed.

5. Manager's Report
    a. Howard Miller provided a written report which is incorporated herein by reference. He highlighted the following:
        i. Howard handled 30+ problems and/or concerns of residents via telephone
        ii. He visited 4 new residents with welcome packets
        iii. He performed a two hour drive around the neighborhood on the evening of September 8, 2012. He noted 30 cars parked on the streets in violation of the bylaws
        iv. He has received help from Beth Swindler and Carl Voges
        v. He is inventorying the violations around the neighborhood with a priority list. He drove around the neighborhood with President Spivey to identify the major violations
        vi. With regards to security, we need an additional camera at the gate on Olde Springs to record license plates for cars leaving the neighborhood.
        vii. He attended the Richland County zoning meetings regarding the change from H1 to C1 for the businesses on N. Brickyard Road and N. Springs Road.

6. Administrator's Report
    a. Beth Swindler provided a written report which is incorporated herein by reference. She noted the following:
        i. Some activity on the delinquency reports but residents are making minimum payments
        ii. Two more foreclosure sales scheduled: #42 and #38 on the list
        iii. Some of the foreclosures are being purchased by new residents
        iv. She is trying to serve Residents #20 and #21 via the Richland County Sheriff. The Deputy Sheriff reported that he/she was unable to serve anyone at those addresses so Beth is going to have them served by a private process server.
        v. #28 there was a foreclosure and the resident is still living in the house. Foreclosure was served in 2010.
        vi. Harry Goldberg volunteered to check on foreclosures from 2010
        vii. Steve Holtschlag asked whether we can keep track of how many rentals are in Spring Valley and how many homes are being foreclosed each

month. Beth stated that she is not informed when a house is being rented and that foreclosures have increased over the last 3 years

viii. Ed Moon's son sent a thank-you note

ix. Beth provided the names of potential homeowner association attorneys. The board is interested in hiring an attorney that specializes in homeowner law to advise us on issues like sheds. This issue was tabled. President Spivey noted that he will include a flyer in the newsletter about the deed restrictions.

7. **Old Business**
   a. Southlake Road Conservation Easement
      i. President Spivey spoke with Louis Lang about the conservation easement. He will provide the board with a written opinion. The easement would require us to diligently try to make sure that Richland County maintains the ditch. The ditch is dumping silt into the lake. There is a question as to whether Richland County stated that they would never come back to address the ditch.
      ii. Beth Swindler reminded the Board that the funding ran out to fix the ditch.
      iii. President Spivey asked Howard Miller to contact Mr. Eppes regarding:
         1. when will the project start;
         2. what is the plan;
         3. is there a maintenance plan.
   b. Nominating Committee Report
      i. Marc Fogarty provided a written report which is incorporated herein by reference. There are four open positions: George Johnson, Rodney Spivey, Paul Spencer and Hunter Limbaugh.
      ii. Marc presented four residents that expressed interest in serving (not including Paul Spencer who wants to be re-elected).
      iii. The committee will meet again to finalize its recommendation
8. **New Business**
   a. 2013 Nominating Committee Chair will be Steve Holtschlag. The entire committee will be announced at the annual meeting
   b. President Spivey received a letter from attorney Noah Hicks. Mr. Hicks represents Ben and Carol Gurganious (440 Spring Valley Road) who claim their property was damaged as a result of a cyclone fence installation. Harry Goldberg instructed Beth and/or Howard to contact our insurance agent to make sure our insurance covers the threatened lawsuit. President Spivey will send a letter to the attorney that we are investigating the matter. Howard will contact Carl Voges to get any documentation he might have.
9. **Adjourn**
   a. **The meeting adjourned at 8:18 pm.**

Respectfully submitted,

George Johnson
Secretary

EXHIBIT 9

to Affidavit of Beth Swindler

Book 1796-73
2012075401 09/13/2012 15:59:14:373 Unpaid Assesment Lien
Fee:$5.00 County Tax: $0.00 State Tax: $0.00

2012075401 John T. Hopkins II Richland County R.O.D.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Spring Valley Homeowners Association, Inc.,)
)
Plaintiff,)
v.)
)
S. Coley Brown and Annette Carlson)
)
Defendants)

NOTICE AND CERTIFICATE OF LIEN FOR HOMEOWNERS' FEES,

NOTICE IS HEREBY GIVEN that Spring Valley Homeowners Association, Inc., a South Carolina Corporation, is due the principal sum of Five Hundred dollars ($500.00), as of December8, 2011, plus interest, costs and attorneys' fees and such other and further assessments, and late fees accruing after said date from the property owner and co-owners S. Coley Brown and Annette Carlson.

That by virtue thereof, by the service and filing of this Notice and Certificate of Lien, Spring Valley Homeowners Association, Inc. has and claims a lien to secure the payment of the obligations due and owing, plus costs, interest, late fees, and other expenses accruing after December 8, 2011, on the property described as follows:

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being designated as Lot Number Nine (9), Block "D" upon a plat of portion of Spring Valley, made by William Wingfield, dated August 29, 1962, revised July 10, 1973 and recorded in the Office of the ROD for Richland County in Plat Book "X", page 9550 and 9550-A; and also being shown and delineated on a plat prepared for Elham Farzam and Afsaneh Z. Farzam by Polson Surveying Co., dated July 28, 1989 and recorded on August 15, 1989 in the Office of the ROD for Richland County in Plat Book 52, page 7176. Said latter plat is specifically incorporated herein and reference is craved thereto for a more complete and accurate description of the premises. Be all measurements a little more or less.
This being the same property conveyed to Coley Brown by deed of Afsaneh Z. Farzam, dated August 31, 2007 and recorded on September 4, 2007 in the Office of the ROD for Richland County in Record Book 1354, page 253, and to Annette Carlson by deed of Coley Brown, dated September 29, 2009 and recorded on October 1, 2009 in the Office of the ROD for Richland County in Record Book 1559, page 2067

TMS# 20005-01-23

118 Spring Valley Road
Columbia, SC 29223

IN WITNESS WHEREOF, SPRING VALLEY HOMEOWNERS ASSOCIATION, INC. has hereunto set its Hand and Seal, by its undersigned officer, this 22 day of August, 2012.

Witness Candace Bro — By: [signature]

Witness: Janice C. Justice — Spring Valley Homeowners Association, Inc.

NOTICE AND CERTIFICATE OF LIEN FOR
HOMEOWNERS' FEES,

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Personally appeared before me, the undersigned witness, and made oath that (s)he saw the within named Spring Valley Homeowners Association, by and through its authorized agent, Rodney Spivey, sign, seal and as its act and deed, deliver the within instrument, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Constance Brown (1st Witness)

Sworn to before me this
22 day of Aug, 2012

Alice L Moss
Notary for the State of South Carolina
My Commission Expires: 4-24-2016

ALICE L. MOSS
NOTARY PUBLIC
SOUTH CAROLINA
My Commission Expires April 24, 2016

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-40-6974

S. Coley Brown,

Plaintiff,

vs.

Spring Valley Homeowners Association, Inc.,

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY FILED
2013 NOV 13 AM 11:41
ANETTE KIRKLAND
CLERK OF COURT

The Plaintiff submits this memorandum in support of his motion for summary judgment in the above-captioned action and in opposition to the Defendant's motion for summary judgment. The claims in this case all center around actions of the Defendant, a homeowners' association, in purporting to levy fines against the Plaintiff for having a for-sale sign in his yard and in recording a purported "notice of lien" stating that the Defendant holds a lien on the Plaintiff's property for the amount of the fines.

This is not a case about failure to pay assessments for common expenses, on which the Plaintiff is current. At its heart it concerns whether, in the absence of any statute or even any restrictive covenant that so provides, a private entity may impose a punishment on another private entity (a natural person) that historically has been and normally is meted out only by the sovereign as a sentence for a criminal infraction.

SUMMARY

The Plaintiff is entitled to summary judgment on liability on his claims in this case and to summary judgment against the Defendant on its claims in this case for the following reasons:

1) Under South Carolina law, property owners/homeowners' associations lack the power and authority to fine the people who own property in the subdivisions to which they

are linked. The power to levy a fine is a power of the sovereign, of government, and there has been no delegation of that power by the State to associations like the Defendant.

2) While the Defendant expressly calls the purported monetary sanctions at issue "fines," even if the Court were to determine them to be contractual penalties, they would still not be enforceable. Even as penalties, the fines at issue do not meet the requirements for a contractual penalty to be enforceable.

3) Even if the Defendant were to convince the Court that it is *theoretically* possible for a homeowners' association to fine its members, it would not be possible for *this* homeowners' association to fine its members. The covenantal restrictions at issue do not provide for the imposition of any fine against a property owner in the subdivision in question. The Defendant's fining of members would have to be authorized by both the law and the covenants to be valid.

4) Even if this particular homeowners' association could fine people, the fines would still not be assessments and, thus, any unpaid fines would not constitute a lien.

5) Independently of the other issues in this case, the restriction at issue is a restraint on alienation that violates public policy (and is thus void) in any event.

6) The Defendant's arguments in support of defenses to the Plaintiff's claims fail as a matter of law.

7) Whether homeowners' associations *ought* to be able to fine people is an issue for the General Assembly, not for this (or any) court. If the Defendant wants to be able to fine its members, it should first seek the enactment of a statute delegating such a power to property owners' associations.

THE STATE HAS NOT DELEGATED ITS POWER TO FINE TO PROPERTY OWNERS' ASSOCIATIONS

Black's Law Dictionary defines "fine" as "[a] pecuniary criminal punishment or civil penalty payable to the public treasury." Black's Law Dictionary 284 (2d pocket ed 2001). In a 2012 case involving a fine, the Supreme Court of the United States discussed other cases involving "imprisonment or a death sentence" and noted that the distinction between those forms of punishment and fines was immaterial to the issue at hand, stating that "fines, like these other forms of punishments, are penalties inflicted by the sovereign for the commission of offenses." So. Union Co. v. U.S., ___ U.S. ____, 132 S.Ct. 2344, 2350 (2012). "Bail, fines, and punishment traditionally have been associated with the criminal process," as our nation's Supreme Court stated on another occasion. Ingraham v. Wright, 430 U.S. 651, 664 (1977). "Fines were by far the most common form of noncapital punishment in colonial America." So. Union, 132 S.Ct. at 2350. At the time of the drafting and adoption of the Constitution of the United States, "the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense. Then, as now, fines were assessed in criminal, rather than private civil, actions." Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, 492 U.S. 257, 265 (1989).

South Carolina law is consistent with this. In State v. Stevens, our state Supreme Court appeared to reject rather roundly the idea of a fine being paid to the prosecutor of a criminal case rather than to the government. 116 S.C. 210, 211 107 S.E. 906 (1921). Our Supreme Court also has also noted that "[a] fine is usually a sum of money exacted from a person guilty of a crime as pecuniary punishment[.]" S.C. State Hwy. Dept. v. So. Ry. Co., 239 S.C. 227, 230, 122 S.E.2d 422, 424 (1961).

As noted by the Supreme Court of Virginia, "[t]he imposition of a fine is a governmental power. The sovereign cannot be preempted of this power, and the power cannot be delegated or

exercised other than in accordance with the provisions of the Constitution of the United States and of [the state (there, Virginia)]." Unit Owners Assn. of BuildAmerica-1 v. Gillman, 223 Va. 752, 764, 292 S.E.2d 378, 384 (1982).

The South Carolina General Assembly has not delegated to property owners' associations any power to impose fines. South Carolina has enacted the Horizontal Property Act, S.C. Code Ann. §§ 27-31-10 - -440, but this Act does not empower any such association to levy fines for anything.[1] A writer on South Carolina law on this subject has noted that "[c]ommentaries have expressed doubt about the legality of levying fines in the absence of statutory authority, of which there is none in the SCHPA [the Horizontal Property Act]. The courts generally agree that absent statutory authorization a council of co-owners may not levy fines." Douglas Scott MacGregor, Condominium Law in South Carolina 49 (3d ed. 2013).

There is indeed wide agreement on this point by courts that have addressed the issue. Wise v. Harrington Grove Community Assn., 357 N.C. 396, 584 S.E.2d 731 (2003) (until enactment of statute that delegated power to fine to homeowners' associations, those associations had no such power); Holbert v. Great Gorge Village South Condominium Council, Inc., 281 N.J.Super. 22, 656 A.2d 1315 (1994)(absent statutory authorization, association could not levy fines, impose penalties, or charge late fees for failure to pay common expenses); Elbadramany v. Oceans Seven Condominium Assn., 461 So.2d 1001 (Fla. 5th DCA 1984); Gillman, 223 Va. At 764; Vernon Manor Co-op Apts., Section I v. Salatino, 178 N.Y.S.2d 895 (1958); see Stewart v. Kopp, 454 S.E.2d 672 (N.C. App. 1994) (where North Carolina's condominium statute *did* authorize fines and declaration of covenants incorporated the statute, association could levy fines for rule violation). In short, courts across the country generally agree that the power to impose

[1] The deed restrictions at issue in this case do not appear to have been made pursuant to the Horizontal Property Act, in any event.

fines, as a governmental function, cannot be exercised by a private actor unless the sovereign has expressly delegated the exercise of that power. See id.

The Defendant's reliance in its memorandum on the powers of nonprofit corporations set out in S.C. Code Ann. §§ 33-31-206 and -302 is unavailing. Our General Assembly provided in S.C. Code Ann. § 33-31-206 that a nonprofit corporation's "bylaws may contain any provision for regulating and managing the affairs of the corporation that is *not inconsistent with law* or the articles of incorporation." (Emphasis added). As a matter of law, the power to fine is vested solely in the government, absent a delegation of that power (which has not been made in this state). See, e.g., So. Union, 132 S.Ct. at 2350; S.C. State Hwy. Dept., 239 S.C. at 230; Gillman, 223 Va. at 764. Enshrining a purported power to fine in association bylaws *is* inconsistent with law. Further, S.C. Code Ann. § 33-31-302 provides that a nonprofit corporation "has the same powers *as an individual*" – not a governmental entity – "to do all things necessary or convenient to carry out its affairs[.]" (Emphasis added). Individuals are not governments; they do not have the power to levy fines. "[A] corporation cannot impose an assessment or fine for a violation of its by-laws unless it is expressly authorized by statute." Vernon Manor Co-op Apts, 178 N.Y.S.2d at 902 (internal citations omitted).

A number of states have enacted statutes that delegate the power to fine to associations of property owners. E.g., N.C.G.S. § 47F-1-102, Nev. Rev. Statutes § 116.310305, Fla. Code § 718.303(3), Ga. Code Ann. § 85-1613e. South Carolina is not among them. Here, unless and until our legislature changes the law, homeowners' associations lack any power or authority to impose fines on their members.

IF THE FINE IS REALLY A PENALTY, IT IS STILL AN UNENFORCEABLE ONE

The Defendant argues that the fines at issue are permissible contractual penalties. While *fines* (government-imposed sentences of monetary payment) are not exactly the same thing as contractual penalties, S.C. State Hwy. Dept., 239 S.C. at 230, the Defendant's claimed fining power fails to meet the requirements of what makes an enforceable liquidated damages provision different from an unenforceable penalty.

If a contract's purported stipulation of liquidated damages owed in the event of breach of the contract actually constitutes a penalty, it will not be enforced. Foreign Academic & Cultural Exch. Servs., Inc. v. Tripon, 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011); Tate v. Le Master, 231 S.C. 429, 442, 99 S.E.2d 39, 46 (1957). Courts look principally to the intent of the parties to the contract in determining whether a provision constitutes a penalty, usually by looking to the language used in the document. Tate, 231 S.C. at 429; ERIE Ins. Co. v. Winter Consrt. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011). Where the stipulation "is reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reason of nonperformance, the stipulation is for liquidated damages." Tate, 231 S.C. at 440. "However, where the stipulation is not based upon contemplated actual damages but *is intended to provide punishment for breach of the contract*, it is a penalty." Moser v. Gosnell, 334 S.C. 425, 432, 513 S.E.2d 123, 126 (Ct. App. 1999) (emphasis added).

Here, the amended by-laws at issue plainly refer to the fines as fines. The nature of fines is that they are punitive measures, not an attempt to compensate for actual losses. The fines are the same regardless of which restriction or rule's violation leads to a fine being imposed. They relate in no way to damages, rather, they are intended to provide punishment.

Also, what we do not have here is a situation in which the Plaintiff entered into a contract with the Defendant that provided for the Defendant to fine the Plaintiff in certain circumstances. Instead, what is here are covenantal restrictions in a deed that nowhere mention fines or penalties. The claimed fining power purports to come from a change to corporate by-laws, not from an agreement between the Plaintiff and the Defendant. Even if it did result from the latter, however, it would still bear plainly the hallmarks of an unenforceable penalty.

EVEN IF IT WERE POSSIBLE FOR AN HOA TO FINE A PROPERTY OWNER, IT IS NOT POSSIBLE FOR *THIS* HOA TO FINE ANYONE

Here, neither the law (as discussed above) nor the covenants state that the Defendant has the power to fine anyone. Even if it were possible for homeowners' associations to fine people in this State, *this* homeowners' association could not do so, as the covenants at issue do not say that they empower or authorize the levying of any fine.

The South Carolina Court of Appeals upheld in 2011 the ruling of a master-in-equity that held that a homeowners' association's rules could not exceed the scope of what was permitted in the declaration of its governing covenants. Rawlinson Road Homeowners Assn., Inc. v. Jackson, 395 S.C. 25, 31, 716 S.E.2d 337, 340 (Ct. App. 2011). (While fines were involved in that case, apparently the issue of fines being a governmental function that cannot be usurped by a homeowners' association was not.)

If there were a common-law basis for homeowners' associations fining people, it would have to be based on an authorization in the governing covenants to do so. There is no such authorization here.

EVEN IF THIS HOA COULD FINE PEOPLE, THOSE FINES WOULD NOT BE LIENS

The only statutory lien in favor of homeowners' associations under South Carolina law is for unpaid assessments for common expenses in a regime governed by the Horizontal Property

Act. S.C. Code Ann. § 27-31-210. The covenants at issue in this case similarly provide for a lien only for unpaid assessments for common expenses. Nowhere is there any basis for the Defendant to have ever contended that the unpaid fines at issue here constituted a lien of any kind.

THE RESTRICTION AT ISSUE IS VOID AS A RESTRAINT ON ALIENATION

"Under South Carolina common law, any unreasonable limitation upon the power of alienation is against public policy and must be construed as having no force and effect." Wise v. Poston, 281 S.C. 574, 579, 316 S.E.2d 412, 415 (Ct. App. 1984). An absolute prohibition on for sale signs absent the permission of the Defendant's board – which may be withheld for any reason, even an arbitrary one – is an "unreasonable limitation upon the power of alienation" and is, thus, void. Id.

THE DEFENDANT'S PURPORTED DEFENSES FAIL AS A MATTER OF LAW

The Defendant's statute of limitations, laches, and business judgment rule defenses fail as a matter of law. First the statute of limitations and laches defenses fail because there was no live controversy to bring suit on until the Defendant sought to impose the fines at issue and, with regard to the slander of title action, recorded the notice of lien at issue. These events happened in 2011 and 2012, well within three years of when this action was brought. Until the occurrence of these events, there was no ripe controversy for a court to determine. E.g., Tracy v. Tracy, 384 S.C. 91, 682 S.E.2d 14 (Ct. App. 2009) (discussing necessity of ripeness to justiciable controversy).

The business judgment rule defense fails because that rule protects individual directors who have made errors in taking entrepreneurial risks on behalf of the corporation; it does not protect a corporation defendant from liability for actions that are outside the law. See Kiriakides

v. Atlas Food Systems & Servs., Inc. 343 S.C. 587, 606 n. 31, 541 S.E.2d 257, 268 n. 32 (2001); Baumann v. Long Cove Club Owners Assn., Inc., 380 S.C. 131, 138, 668 S.E.2d 420, 424 (Ct. App. 2008); Goddard v. Fairways Dev. Gen. P'shp., 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993); Dockside Assn., Inc. v. Detyens, 291 S.C. 214, 216-17, 352 S.E.2d 714, 716 (Ct. App. 1987). A corporation cannot exercise powers that are outside the scope of what the law authorizes; such acts are *ultra vires*, which makes the business judgment rule inapplicable in any event. Baumann, 380 S.C. at 138; Goddard, 310 S.C. at 414; Dockside Assn., 291 S.C. at 216-17. As discussed above, a nonprofit corporation like the Defendant has statutory authorization to exercise "the same powers *as an individual*" – not a governmental entity – "to do all things necessary or convenient to carry out its affairs[.]" S.C. Code Ann. § 33-31-302 (emphasis added). To fine is a power of a sovereign government, not of any individual. Purporting to usurp that power is beyond the protection of the business judgment rule.

SLANDER OF TITLE

"Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title." Huff v. Jennings, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995). There is no reason to think it would not be actionable here.

UNFAIR TRADE PRACTICES

The Defendant argues that the Plaintiff's unfair trade practices claim cannot lie because the Defendant is not engaged in trade or commerce and its actions do not impact the public interest.

An action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, lies where there is a violation of the Act (i.e., an unfair or deceptive act in trade or commerce that impacts the public interest) that proximately causes damages to the plaintiff.

See, e.g., Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 417, 458 S.E.2d 431 (Ct. App. 1995). "'Trade' and 'commerce' shall include the . . . distribution of any services and any property, tangible or intangible, . . . and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b). Trade and commerce are interpreted broadly for purposes of the UTPA. The text of S.C. Code Ann. § 39-5-10(b) states that:

> "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

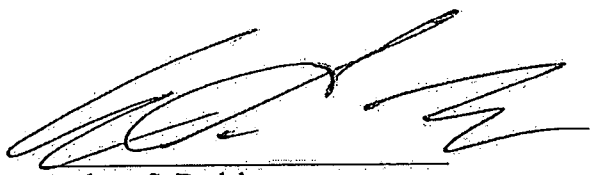
Our Court of Appeals has held that "[t]he statute's use of the words 'shall include' clearly suggests the legislature did not intend to limit 'trade' and 'commerce' to only the listed transactions." Baker v. Chavis, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991). "[T]he UTPA 'should be given a liberal construction.'" McTeer v. Provident Life and Accident Ins., 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting Connolly v. People's Life Ins. Co., 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988)).

The Defendant provides the services of a homeowners' association: maintenance of common elements, for example. That is "trade" or "commerce" for these purposes. Further, its actions at issue here impact the public interest: they are capable of repetition, as they are enshrined in the Defendant's by-laws as a policy applicable to all association members, and it seems plain that the purported usurpation of the government's power to fine impacts the public interest.

THE DEFENDANT WANTS THIS COURT TO TAKE ON THE ROLE OF THE LEGISLATURE

What the Defendant's memorandum appears to say is that the law *ought* to allow homeowners' associations to fine people. That, however, is not a question for this Court or any court; instead, it is a question for the South Carolina General Assembly. Our legislature has not empowered homeowners' associations to fine people by delegating that state power to them. Unless and until that happens, they cannot exercise that exclusively governmental power.

Respectfully submitted,



Andrew S. Radeker
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(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
November 13, 2013

D 493 PAGE 171

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MAR 5 2 51 PM '79

INDENTURE made the day hereinbelow stated, by and between PINE SPRINGS, INC., a Corporation duly organized and existing under the laws of the State of South Carolina, hereinafter called the GRANTOR, which expression shall include its successors and assigns, where the context so requires or admits, of the one part, and GOODWIN CONSTRUCTION, INC., hereinafter called the GRANTEE, which expression shall include its successors and assigns where the context so requires or admits, of the other part; and in this agreement the singular shall include the plural, and any gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained the sum of SIXTEEN THOUSAND, NINE HUNDRED TWENTY AND NO/100 ($16,920.00)- - - - DOLLARS paid to the GRANTOR by the said GRANTEE, the said GRANTOR has granted, bargained, sold and released, and by these presents, grants, bargains, sells and releases unto the said GOODWIN CONSTRUCTION, INC.

All that certain piece, parcel or lot of land, situate, lying and being on the subdivision known as "Spring Valley", about ten miles Northeast of the capitol of the City of Columbia, in the County of Richland, State of South Carolina, and being shown and designated as Lot No. 9, Block "D" on Plat of Lots 9 & 10, Block "D", Spring Valley, prepared by William Wingfield, Reg. Surveyor, dated December 8, 1971 and recorded in the Office of the R.M.C. for Richland County in Plat Book Y, at page 3796. Said property being bounded and measuring as follows: On the Northeast by Northlake Road, as shown on said plat, whereon it measures One Hundred Fifty-five and nine-tenths (155.9') feet, more or less; on the Southeast by Spring Valley Road, as shown on said plat, whereon it fronts and measures Two Hundred (200') feet, more or less; on the Southwest by Lot No. 10, Block "D", as shown on said plat, whereon it measures One Hundred Eighty nine (189') feet, more or less; and, on the Northwest by Lots Nos. 7 and 8, Block "D", as shown on said plat, whereon it measures Two Hundred Thirty-nine (239') feet, more or less.

This beirg a portion of the same property heretofore conveyed to grantor by Master's Deed, James M. Cureton, as Master in Equity for Richland County, dated June 23, 1977 and recorded in the Office of the R.M.C. for Richland County in Deed Book D-466, at page 522.

Grantee's Mailing Address: Route #1, Box 327
Chapin, South Carolina 29036

SOUTH CAROLINA DOCUMENTARY TAX COUNTY
1.8.70

This conveyance is made subject to the following conditions, covenants and restrictions:

(1) By acceptance of this deed, the GRANTEE covenants and agrees that GRANTEE will become a member of the Spring Valley Homeowners Association and will abide by its duly enacted rules, regulations and by-laws, and that GRANTEE will pay to the Association the periodic assessment due the Association for the purposes of

State of South Carolina
I certify that this is a true and correct copy
Dated 10-03-13

EXHIBIT 1

maintaining and repairing the roads, streets, parks and other common areas which are the property of the Association and for providing private security protection to the owners of property in Spring Valley. The amount of such assessment and the method of handling said payments shall be determined by the By-laws of the Association as duly adopted from time to time, a current copy of which shall be furnished upon request. GRANTEE___ agrees that such periodic assessments shall constitute a lien upon the property, subject and junior to the rights of all first mortgagees to the rights of the holder of any mortgage securing a purchase money obligation for the purchase of or an interest in any improved or unimproved lot to which such assessment related and to the rights of the holder of any mortgage securing an obligation incurred in connection with the installation or construction of permanent improvements upon the lot to which such assessment relates as well as a personal obligation of GRANTEE___ and every succeeding owner.

(2) No structure shall be erected on this lot other than one single family dwelling and detached or attached garage of similar design, including servants' quarters, if desired; and no use shall be made of the property, or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family.

(3) No lot referred to herein shall be subdivided or reduced in size without the written consent of the GRANTOR.

(4) No noxious or offensive activity shall be carried on upon this lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No hogs, goats, poultry, cows, or horses which shall constitute a nuisance or cause unsanitary conditions, or any undesirable situation to any neighboring property, shall be maintained on this lot; and nothing shall be done, or any condition permitted on said lot which shall pollute the water of any lake, stream or pond in or near Spring Valley Estates.

(5) No temporary structure or garage apartment shall be erected upon this lot.

(6) An easement is reserved unto the GRANTOR herein over five feet along each side line of each lot and over the front five feet and rear ten feet of each lot for utility installation, utility rights-of-way and maintenance thereof, as well as drainage installations, drainage rights-of-way and maintenance thereof.

(7) All sewer disposal shall be through private, individual septic tanks approved by the State Department of Health or collection sewer lines to be installed by the GRANTOR herein, as approved by the Board of Health and through outfall lines to be installed by the City of Columbia, in cooperation with land owners on the Crane Creek watershed, or through the outfall lines now installed, and to be installed, by the East Richland County Public Service District, or such other sewer disposal system as may be installed and approved by the State Board of Health. A reasonable sewer connection charge of $ 250.00 will be required at the time of each tap, and a reasonable monthly sewer fee will be charged based upon the cost of operating the sewer system.

(8) No building, fence, or other structure of any kind shall be erected, placed or altered on the lot hereby conveyed until the building plans, specifications, design and plot plan showing the location of the building, fence or structure on this lot have been approved by the GRANTOR, its successors or assigns, in writing, as to conformity in size, type and quality, and as to location of the building, fence or structure with respect to topography and finished ground elevation.

(9) If the lot hereinabove described borders on a pond or lake, then the GRANTEE'S use of the pond or lake shall be limited strictly to such purposes as may be authorized in writing, by GRANTOR, its successors or assigns, and in the event of any damage or other need for repairs to the dams hereafter, the cost of repairs shall be borne by the bordering property owners of a pro-rata front foot basis. The use of motor boats on any of the lakes or ponds is to be prohibited unless authorized by the GRANTOR, the Spring Valley Country Club and a majority of the property owners owning property on the lake or pond.

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V.S. 827 R.2

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(10) It is understood and agreed between the parties hereto that the hereinabove described property is sold as is and GRANTOR shall not be responsible for the installation or maintenance of storm drains, control of surface water, or maintenance of streets after said streets have been dedicated to the County or conveyed to the Spring Valley Homeowners Association.

(11) Except as specifically provided for in this paragraph, no "SALE" or "RENT" signs or other types of advertising or billboards shall be permitted on the property hereby conveyed:

(a) Where there is a newly constructed dwelling upon a lot and there has been no previous sale of the lot with a dwelling thereon not more than two (2) "For Sale" signs only (the size and content of which must be submitted in advance to GRANTOR, its successors or assigns for approval) may be placed upon the lot.

(b) After the first sale of a lot with a dwelling thereon no further signs of any type shall be permitted except that in cases of hardship, subject to prior approval by Spring Valley Homeowners Association, one "For Sale" sign, not larger than 2 feet by 3 feet may be installed where there is a dwelling house for sale.

(c) No sign shall ever be nailed or fastened to any tree at any time.

(12) No clothes lines, exposed garbage containers or other unsightly objects are to be erected or used on the property except where they are screened from the streets, lakes, adjoining properties or general view.

(13) No trucks or commercial vehicles or commercial equipment of any kind are to be garaged or stored on the lots.

(14) If any sentence, clause or paragraph of this agreement shall be found by a Court of competent jurisdiction to be invalid or unenforceable, it shall in no way affect the validity or enforceability of any other sentence, clause or paragraph hereof.

AND IT IS UNDERSTOOD AND AGREED that the said conditions, covenants and restrictions shall be appurtenant to and run with the same premises; and that in the event of the violation of any of the said conditions, covenants and restrictions, the said GRANTOR, its successors or assigns, shall have the right, jointly or severally of abatement and to enforce compliance by injunction of any other appropriate legal action. It is further understood and agreed that requirement to pay the periodic assessments of Spring Valley Homeowners Association shall run with the land and bind GRANTEE____, its heirs, successors and assigns.

TOGETHER with, all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Goodwin Construction, Inc., its successors ~~heirs~~ and assigns forever.

And the said GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Goodwin Construction, Inc., its/successors ~~heirs~~ and assigns, against itself and its its successors and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

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IN WITNESS WHEREOF, the GRANTOR and the GRANTEE(S) have caused these presents to be executed and delivered and their respective seals hereunto affixed this 1st day of March, in the year of our Lord One Thousand Nine Hundred and seventy-nine, and the two hundred and second year of the sovereignty and independence of the United States of America, execution of behalf of GRANTOR being by its heretofore duly authorized officers named below.

Signed, Sealed and Delivered
in the Presence of:

Mabel H. Quattlebaum

T. Edward Cooper

PINE SPRINGS, INC.

By: Robert W. Cooper
President

(CORPORATE SEAL)

Attest: James D. Cooper
Secretary

GRANTOR

Victoria C. Chappell

Mabel H. Quattlebaum

GOODWIN CONSTRUCTION, INC. (L.S.)

By: [illegible] (L.S.)
President

GRANTEE(S)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Before me, the undersigned Notary Public for South Carolina, personally appeared T. Edward Cooper, and made oath that s/he saw the above named PINE SPRINGS, INC., by Robert W. Cooper, its President, and James D. Cooper, its Secretary, sign, seal and as the act and deed of the said Corporation, deliver the within-written deed for the uses and purposes therein mentioned, and that s/he with Mabel H. Quattlebaum witnessed the execution and subscribed their names as witnesses thereto.

SWORN TO and subscribed before
me this 1st day of
March, 19 79.

T. Edward Cooper

Mabel H. Quattlebaum (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: Feb. 18, 1980.

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Record on Appeal 434

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Before me, the undersigned Notary Public for South Carolina, personally appeared Victoria C. Chappell, and made oath that she/he saw the above named Goodwin Construction, Inc. by its President, sign, seal and as its act and deed, deliver the within-written deed for the uses and purposes mentioned therein, and that she/he with Mabel H. Quattlebaum witnessed the execution thereof and subscribed their names as witnesses thereto.

SWORN TO and subscribed before me this 1st day of March, 19 79.

Victoria C. Chappell

Mabel H. Quattlebaum (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: Feb. 18, 1980.

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v. Spring Valley Homeowners Association, Inc., Defendant.	)	Civil Action No.: 2012-CP-40-6974 **DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS TO ADMIT**

TO: ANDREW S. RADEKER, ESQUIRE, COUNSEL FOR PLAINTIFF:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute this Defendant's Responses to Plaintiff's First Set of Requests to Admit:

1. The attached Exhibit A is a copy of a letter the Defendant, through its general manager, sent to the Plaintiff on or about October 4, 2011.

ANSWER: **Admitted.**

2. The attached Exhibit B is a copy of a letter from Plaintiff's counsel that the Defendant received in October of 2011.

ANSWER: **Admitted.**

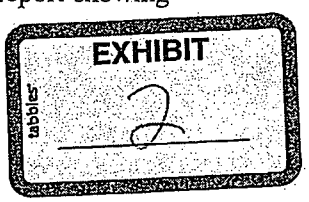
3. The attached Exhibit C is a copy of a letter from Plaintiff's counsel (with its enclosures) that the Defendant received on or about December 8, 2011.

ANSWER: **Admitted.**

4. The attached Exhibit D is a copy of a letter and its attachment that an attorney for the Defendant sent to the Plaintiff on or about April 9, 2012.

ANSWER: **Admitted.**

5. The attached Exhibit E is a copy of a letter from Plaintiff's counsel to the attorney who sent the letter that is Exhibit D, along with a fax cover sheet and a fax result report showing



that the law firm of that attorney for the Defendant received the letter from Plaintiff's counsel on or about May 3, 2012.

ANSWER: **Admitted.**

6. The attached Exhibit F is a copy of a letter to the Plaintiff from a law firm representing the Defendant that was sent to the Plaintiff on or about September 18, 2012.

ANSWER: **Admitted.**

7. The attached Exhibit G is a copy of the document entitled "NOTICE AND CERTIFICATE OF LIEN FOR HOMEOWNERS' FEES" that the Defendant recorded in the office of the Richland County Register of Deeds on September 13, 2012.

ANSWER: **Admitted.**

8. The attached Exhibit H is a copy of an "Information Guide" the Defendant publishes on its website.

ANSWER: **Admitted.**

9. The attached Exhibit I is a copy of a photograph of the sign that the Plaintiff placed on his property in Spring Valley.

ANSWER: **Admitted.**

10. The attached Exhibit J is a copy of a photograph showing the sign that the Plaintiff placed on his property in Spring Valley.

ANSWER: **Admitted.**

11. The attached Exhibit K is a copy of an "Information Guide" the Defendant provided to the Plaintiff at or around the time he bought property in Spring Valley.

ANSWER: **Admitted, upon information and belief.**

12. There is no statute that authorizes or empowers the Defendant to fine its members.

ANSWER: **Defendant objects to this Request for Admission, as it is not a proper subject for a Request for Admission, as it does not relate to statements or opinions of**

fact, the application of law to fact, or the genuineness of any documents, but rather seeks an admission solely as to a statement of law; therefore, such Request for Admission is improper and Defendant objects on this ground. Notwithstanding this objection and without waiving the same, Request for Admission twelve (12) is denied, upon information and belief.

13. There is no covenant that authorizes or empowers the Defendant to fine its members.

ANSWER: Denied as stated.

BROWN & BREHMER

By: _____

Ely O. Grote, Esq.
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Post Office Box 7966
Columbia, South Carolina 29202
(803) 771-6600
Attorneys for Defendant

FINKEL LAW FIRM, LLC

Charles A. Krawczyk, Esq.
120 Main Street, Suite 1800
P.O. Box 1799
Columbia, SC 29202
SC Bar # 16832
Attorneys for Defendant

Columbia, South Carolina
December 14, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v. Spring Valley Homeowners Association, Inc., Defendant.	)	Civil Action No.: 2012-CP-40-6974 **CERTIFICATE OF SERVICE**

I, the undersigned employee of Brown & Brehmer, hereby certify that copies of the following documents have been served on the following individual(s) by depositing same in the United States Postal Service with the proper amount of first-class postage duly affixed this 14th day of December, 2012.

PLEADINGS: Defendant's Responses to Plaintiff's First Set of Requests to Admit

SERVED ON: Andrew S. Radeker, Esq.
Harrison & Radeker, P.A.
P.O. Box 50143
Columbia, SC 29250

Melissa Hafer
Melissa Hafer, Legal Assistant

LAW OFFICES
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

James C. Harrison, Jr.*
Andrew S. Radeker
Andrew M. Thompson
Kathryn B. Beighley
* Mediator/Arbitrator

P.O. Box 50143
Columbia, SC 29250

(803) 779-2211
(803) 779-6700 (FAX)

December 8, 2011

VIA HAND DELIVERY BY COLEY BROWN
Board of Directors, Spring Valley Homeowners Association
c/o Harry L. Goldberg, Esq.

Re: Authority of homeowners' associations to fine their members

Dear Members of the Board:

As you know, I represent Mr. S. Coley Brown. I will not be attending the meeting this evening, and I authorize you to communicate directly with Mr. Brown at that hearing. I believe Mr. Brown is quite capable on his own of expressing to you the hardship that called for him to place a for sale sign on his Spring Valley property and of relating the facts of your Association's prior summary refusal to evaluate whether he should be allowed to put up a for sale sign.

I write to address a different matter: whether the Association may lawfully fine any of its members. It cannot. While our state appellate courts have never been presented with this question, courts in other states that have dealt with it have concluded that, since the power to levy fines is a governmental power, unless some statute has been enacted by a state in which the state authorizes homeowners' associations to fine their members, such associations lack the ability to do so – even if their covenants or by-laws say they can. I enclose a copy of two such decisions with this letter, Unit Owners Ass'n of Buildamerica-1 v. Gillman, 292 S.E.2d 378 (Va. 1982), and Vernon Manor Co-op. Apts., Section 1 v. Salatino, 178 N.Y.S.2d 895 (1958). South Carolina has no statute authorizing homeowners' associations to fine their members; thus, neither your association nor any other in this state has the power to do so. It does not matter that the by-laws say that you can. I trust that if the Association's by-laws said the Association could imprison a member for violating Spring Valley deed restrictions, no one on this board would believe that it would be lawful for the Association to do so. Fines are no different.

Furthermore, your by-laws cannot expand the authority granted under the Spring Valley covenants. The covenants do not authorize fines but only authorize periodic assessments. Plainly, a fine is not a periodic assessment.

Thank you for your attention. I trust that you will act in accordance with the law.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Andrew S. Radeker

ASR/
Enclosures

EXHIBIT
3

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
S. Coley Brown, Plaintiff, v. Spring Valley Homeowners Association, Inc., Defendant.	)	Civil Action No.: 2012-CP-40-6974 **DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF'S FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

As Defendant was provided with a copy of Plaintiff's memorandum of law very shortly before the hearing on the cross-motions for summary judgment in this matter and did not have an opportunity to fully review the arguments and legal authority cited therein prior to the hearing, Defendant hereby submits this reply to address some of the points raised in Plaintiff's memorandum.

I. CONDOMINIUM ASSOCIATION LAW IS INAPPLICABLE TO THIS DISPUTE

Plaintiff's memorandum cites several cases and legal authorities for the proposition that a homeowners association cannot levy fines absent specific statutory authorization to do so. However, the vast majority of the cases and legal authorities cited by Plaintiff deal with condominium associations and interpretation of Condominium Acts:

- Unit Owners Ass'n of BuildAmerica-1 v. Gillmam,, 292 S.E.2d 378 (Va. 1982) – condominium established under the Virginia Condominium Act
- Holbert v. Great Gorge Village South Condominium Council, Inc., 656 A.2d 1315 (N.J. Super. Ct. 1994) – New Jersey Condominium Act
- Elbadramany v. Oceans Seven Condominium Ass'n, 461 So.2d 1001 (Fla. Dist. Ct. App. 1984) – Florida Condominium Act
- Stewart v. Kopp, 454 S.E.2d 672 (N.C. Ct. App. 1995) – North Carolina Condominium Act
- Vernon Manor Coop. Apartments, Section I v. Salatino, 178 N.Y.S.2d 895 (N.Y. App. Div. 1958) – New York Cooperative Corporations law

- Nev. Rev. Statues § 116.310305 – Nevada Uniform Common-Interest Ownership Act, governing condominiums
- Fla. Stat. ch. 718.303(3) – Florida Condominium Act
- Ga. Code Ann. § 85-1613e – no longer exists, but appears to have been a part of the former Georgia Condominium Act
- S.C. Code Ann. § 27-31-10 to -440 – South Carolina Horizontal Property Act, governing South Carolina condominiums
- Douglas Scott MacGregor, Condominium Law in South Carolina (3d ed. 2013) – apparently interpreting the South Carolina Horizontal Property Act

The defendant in this case is not a Condominium Association, but rather is what is typically referred to as a planned community. Condominium Associations and homeowners associations for planned communities are not one and the same, as Plaintiff suggests by lumping them together. Rather, they are distinctly different entities that are created differently and are governed by separate rules. Condominiums and their associations are created by and governed by statute, thus condominium associations' powers and authority must derive from statute. Consequently, to the extent that the above authorities are cited by plaintiff for the proposition that statutory authority is required to issue a fine, that is simply an acknowledgement that entities whose authority derives from statute and whose powers are defined by statute, must act within the statutory authority conveyed by the applicable Condominium Act or governing statutory scheme.

As noted above and conceded by Plaintiff, the Defendant is not a condominium association and is not governed by the South Carolina Horizontal Property Act. There is no statute or statutory scheme in South Carolina that specifically governs the creation of and powers of homeowners associations in planned communities. Consequently, homeowners associations for planned communities in South Carolina are not creatures of statute and their powers do not derive from statute like condominium associations. Rather, the powers of a homeowners association for a planned community in South Carolina derive from the deed covenants and

restrictions and the bylaws, and are governed primarily by common law. Consequently, homeowners associations for planned communities in South Carolina do not require specific statutory authority to act and they are not constrained to act in the absence of statutory authority like a condominium association. Consequently, any citation to condominium association law is misplaced and without merit. Here, the Defendant acted within the authority granted by the Covenants, restrictions and bylaws, thus the fine should be upheld. Further, while statutory authority for a homeowners association for a planned community in South Carolina to levy a fine is not required, the South Carolina Nonprofit Act nonetheless provides statutory authority in any event, as more fully set forth in Defendant's original memorandum.

II. RAWLINSON ROAD HOMEOWNERS ASSOCIATION v. JACKSON

Second, Plaintiff cites the case of Rawlinson Road Homeowners Association v. Jackson, 295 S.C. 25, 716 S.E.2d 337 (Ct. App. 2011) for the proposition that HOA rules cannot exceed the scope of what is permitted in covenants. However, the Court of Appeals in the Rawlinson Road Homeowners Association case never made any ruling on that issue and citation to Rawlinson Road Homeowners Association for such a proposition is misplaced.

The Rawlinson Road Homeowners Association case involved an appeal from the ruling of the master in equity concerning a homeowner storing a boat on his lot. Id. at 27, 716 S.E.2d at 339. The Court of Appeals, in its recitation of the procedural and factual history noted that the master in equity found that the restrictive covenants for the HOA only empowered the HOA to adopt rules and regulations concerning common areas, thus the HOA did not have authority pursuant to the restrictive covenants to adopt rules and regulations concerning an individual lot. Id. at 27-33, 716 S.E.2d at 339-41. However, that specific ruling was apparently never appealed and the Court of Appeals never addressed that issue. Thus, such a ruling by a master in equity is

neither binding nor persuasive authority on this Court. Rather, the Court of Appeals simply ruled that the HOA failed to file any responsive affidavits and otherwise failed to properly come forward with any evidence to oppose plaintiff's motion for summary judgment, as required by Rule 56, SCRCP. Id. at 33-34, 716 S.E.2d at 341-42. Further, the Court of Appeals addressed whether the proper standard was applied in considering a request for injunctive relief and whether the master in equity erred by excluding certain testimony. Id. at 35-38, 716 S.E.2d at 343-344.

Further, even if the Rawlinson Road Homeowners Association case could be cited for the proposition that HOA rules cannot exceed the scope of what is permitted in the covenants, the bylaws as well as the rules and regulations in this case do exceed the scope of the covenants. In this case, the covenants do no limit the authority of the HOA to issue bylaws, rules and regulations only to common areas. Rather, the applicable covenants state that Plaintiff shall abide by the duly enacted rules, regulations and bylaws of the HOA. Consequently, the covenants in this case do not contain any restriction on the scope of the bylaws, as was the case in Rawlinson, and the HOA has the authority to make bylaws and rules regulating the individual lots. It is interesting to note that the Court was aware that a fine was issued in the Rawlinson case, but the Court of Appeals never questioned the legality of a homeowners association's ability to fine and cast no doubts as to that power. Notably, in Seabrook Island Property Owners' Ass'n v. Berger, 365 S.C. 234, 239, 616 S.E.2d 431, 434 (Ct. App. 2005), the Court of Appeals also acquiesced as to a homeowners association's ability to sanction its members for rules violations. In determining the contractual basis for the recovery of attorney's fees, the Court cited the trial judge's order that noted, in part, "Paragraph 2(e) [of the Covenants] addresses the adoption, distribution, and enforcement of the regulations for the common good,

including regulations for the design and construction of improvements on and for the maintenance of property, as well as *sanctions* for violations." Id. at 239, 616 S.E.2d at 434 (emphasis added). Despite knowledge of the property owners association's authority to sanction members for violations of the rules, the Court of Appeals never questioned such authority and never cast any doubt on such authority.

III. CORRECTION

After submission of its initial memorandum and upon further research, defense counsel has discovered that it appears that Florida and Georgia have a specific statutory schemes governing and regulating homeowners associations, unlike South Carolina, although such statutory schemes are not expressly referenced in Zerquera v. Centennial Homeowners' Association, Inc., 721 So.2d, 751 (Fla. Dist. Ct. App. 1998) and Crouch v. Bent Tree Community Inc., 713 S.E.2d 402, 404-06 (Ga. Ct. App. 2011), cited by Defendant. It is believed that these statutory schemes may directly address the authority to fine, although no such reference is made in Zequerna and Crouch. Consequently, out of candor to the Court and opposing counsel, Defendant hereby withdraws citation to Zerquera and Couch in its initial memorandum. However, since these entities appear to be created by and governed by a direct and comprehensive statutory scheme, they are distinguishable from homeowners associations for planned communities in South Carolina, as set forth in Section I above.

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November 19, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Judge

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SC Court of Appeals

Common Pleas Case Nos. 2012-CP-40-6974 & 2014-CP-40-3960 (restored) M4086

S. Coley Brown,.....Appellant,

v.

Spring Valley Homeowners Association, Inc.....Respondent.

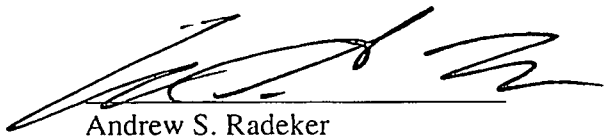
NOTICE OF APPEAL

S. Coley Brown (hereinafter "Appellant") appeals from the orders of the Honorable Eugene C. Griffith, Jr., filed April 4, 2014, October 6, 2014, and October 23, 2014[1]. Copies of these orders are attached hereto. Appellant received written notice of the entry of the first of these orders on June 9, 2014, received written notice of the entry of the second of these orders on October 20, 2014, and, on October 27, 2014, discovered the entry date of the last of these orders given in the electronic public index.

October 27, 2014

[1] This last date is based on information from the electronic public index, as the undersigned has not received a clocked copy of the last of these orders.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2014-002587
Common Pleas Case No. 2012-CP-40-6974

S. Coley Brown,.....Appellant,

v.

Spring Valley Homeowners Association, Inc.....Respondent.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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September 2, 2015